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THE Nation

December 12, 1953

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Freedom and the American Tradition: 1953

Annual Civil Liberties Issue

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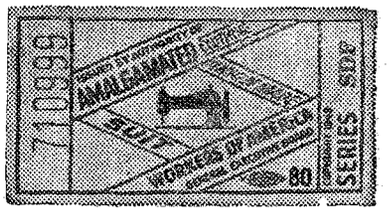

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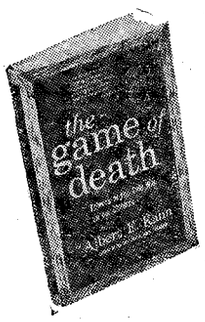

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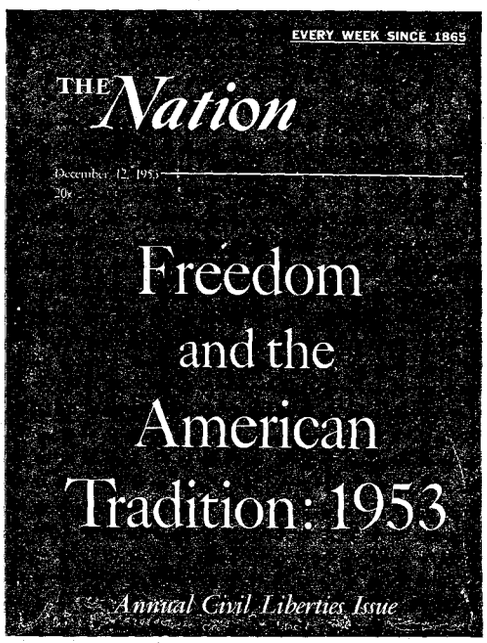

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Volume 177, Number 24
New York, Saturday, December 12, 1953

THE Nation

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SPECIAL CIVIL LIBERTIES ISSUE

FREEDOM AND THE AMERICAN TRADITION: 1953

Bill of Rights Day

WITH civil-liberties issues breaking in thunderous headlines every week, an examination of the continued relevance and integrity of the American tradition becomes a first order of business.

Today both individuals and institutions are afflicted with a form of creeping paralysis which is both an effect and a cause of the crisis of democracy. Organizations that could normally be relied upon to come to the aid of the victims of the witch hunt often fail to act, for the welfare, indeed the very existence, of the organization is threatened by the same forces that have set the witch hunt in motion. In such circumstances it is easy and natural for the bureaucrats to rationalize as follows: the principles to which the institution is dedicated must be "reconsidered" in "the light of new circumstances"; the influence of the institution must not be "frittered away" or used to protect unworthy victims; resources must be husbanded, etc. Many individuals keenly distressed by the witch hunt hesitate to take action for much the same reasons. At what point, the individual asks, am I justified in risking the security of my family to defend a principle in which I believe?

In consequence a leadership vacuum is created enabling a handful of book-burners and other zealots, well organized and knowing precisely what they want, to rack up a seemingly endless list of conquests. Most of these might easily have been avoided if persons devoted to civil liberties had intervened in a timely, coordinated manner. Thus in Los Angeles a fourteen-year-old juvenile delinquent induces the cancellation of an important radio program by gleefully composing a dozen poison-pen letters, written in different hands and signed by different names, which he sends to the sponsors and the station. Or witness the many situations in which giant corporations have capitulated to a handful of fanatics. But this is not to minimize the crisis today confronting American democracy, which has had tragic consequences for thousands of law-abiding citizens.

In such times as ours those who defend civil liberties—and they are always a minority—must do so at considerable personal risk and against unpleasant odds. But unfortunately principles never defend themselves; every social value implicit in the American tradition has been forged in a fire which consumed the lives and hopes of a great many individuals. Today as always the principal defenders of civil liberties are the victims of bigotry; on their behavior, on their courage or the lack of it, the outcome largely depends. In their wretched loneliness these unfortunate ones seek some source of support for the risks they run in defense of principles in which they believe. And as men have always done under such circumstances, they fall back on tradition to sustain them.

AND SO TODAY many people are thinking about the American tradition and its relevance to their moral and political dilemmas and about the price they may be asked to pay for its preservation. Is it adequate to the needs of the times? Will it sustain them? Has it become irrelevant? What is the meaning of Irving Dilliard's comment in this issue that the Bill of Rights would probably fail of adoption in a nation-wide referendum today? If so, is this because we fail to see what is happening or are we deliberately rejecting this tradition? Is it any wonder that the Germans are said to take great satisfaction in the spectacle of the American people, under stress, exhibiting much the same susceptibility to demagoguery and the same failure to take timely action against it that we found inexcusable and inexplicable in them not so long ago?

The crisis of democracy in America is perhaps best indicated by the growing realization of a self-evident but long-neglected fact—namely, that the American tradition is not one thing. Various elements have long been in conflict in this multi-faceted tradition; indeed, this has been its unique quality, for it has forced every generation and every American to affirm that aspect of the tradition which most closely approximates his concept of what it *should be*. For better or worse, we must acknowledge the bastards spawned by the tradition as well as its heroes. Joe McCarthy and Justice William O. Douglas are both products of the American tradition. And so were the Salem witch-burners and Roger Williams, the slave

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traders and Abraham Lincoln, Father Coughlin and Franklin D. Roosevelt, Whittaker Chambers and the late John Jay Chapman. The duality of the tradition—so much in evidence today—confuses the world and breeds confusion in many individuals. And the bigots have served notice that they intend to rewrite this tradition to their liking. The phrase "un-American" surely has quite different meanings for Senators Jenner and Lehman, both of whom are equally patriotic in the sense that both would die for their country—although they could never agree on an answer to that searching question raised in the title of a great book by Alexander Meiklejohn, "What Does America Mean?" The fact that the American tradition has never been given an orthodox definition or an authoritative interpretation has been a source of strength; but today it can be a major weakness, for what we decide to do in the world hinges in no small measure on the way a majority of Americans answer Dr. Meiklejohn's question.

THERE IS also the danger that when we appeal to the "American tradition" we do so in too formal a sense and are then dismayed to discover that since this tradition has no fixed meaning, new meanings must constantly be given the words and phrases of the Bill of Rights if its spirit is to be preserved and made applicable to current needs. There is a real danger in not thinking of the American tradition as living, growing, changing, an attitude of mind and heart—not an aging parchment. More than one person has commented upon the ironies implicit in sending the Freedom Train out across the country, with its cargo of precious documents, during a period when civil rights and civil liberties were being disregarded in many of the cities in which the train stopped. Indeed, the train had to detour certain cities to avoid segregated showings. On Bill of Rights Day (December 15) last year, the Constitution, the Bill of Rights, and the Declaration of Independence were removed from the Library of Congress and placed, with great fanfare and ceremony, in a shrine under the dome of the National Archives Building in Washington. The emphasis placed on the "security" of the documents themselves—sealed in helium between sheets of glass and then lowered into a fifty-ton safe guaranteed to protect them against every hazard except the loss of meaning—painfully suggested the ritual of interment, as was noted in *The Nation* of December 27, 1952, under the heading: The Bill of Rights—Burial or Resurrection. Then and there we decided to devote an entire issue, as this year's observance of Bill of Rights Day, to the American tradition in all its vital complexity.

The issue opens, therefore, with an exploration by Howard Mumford Jones of certain puzzling aspects of the tradition and its relevance to today's concerns.
—EDITORS THE NATION.

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Certain Unalienable Rights

by Howard Mumford Jones

THE conventional theory of civil rights in the United States pictures these grand but elusive concepts as a set of ideas imported from England at the earliest possible date. They come in neatly wrapped in articles of incorporation for a trading company or in the colonial charters. Out of them American liberty is born. Never clearly defined, these rights serve the colonists as a defense against royal governors, kingly usurpation, and parliamentary interference. Eventually, clad in the armor of a righteous cause, mysterious yet powerful, they play their role in arousing, sustaining, and winning the American Revolution. Then they disappear except for a brief, dramatic entrance in disguise into the Ordinance of 1787. Finally, after a body of great and good men meeting in Philadelphia produce the American Constitution and somehow forget to put any rights into it, friends of the people, like Patrick Henry, arouse the nation, and, as a consequence, the first ten amendments become their permanent home.

All popular historical legends deserve a certain respect, and there is truth in this one. Nevertheless, the over-simplification is very great. Whatever was meant by the "rights of Englishmen" in colonial charters and documents contemporary with them, canny Americans glossed the phrase in one way, and the English glossed it in another. In the earlier eighteenth century, again, the doctrine of rights somehow got entangled with the power to emit paper money, an issue on which the colonists were probably more wrong than right. During and after the French and Indian War "rights" were sometimes a function of economic distress, and economic distress sometimes the result of popular demand for "rights," so that intellectual history becomes complex. It is also interesting to remember that the three rights everybody can quote are "life, liberty, and the pursuit of happiness," but that

the pursuit of happiness is a legal novelty in a peculiarly American document that has only an indirect relation to the Constitution.

Finally it should be observed that during the debate over that Constitution patriotic Americans often deprecated rights or a bill of rights as a shackle on popular government. Thus Noah Webster, who struggled to establish the American language, wrote in his *American Magazine* in 1787: "A Bill of Rights against the encroachments of Kings and Barons, or against any power independent of the people, is perfectly intelligible; but a Bill of Rights against the encroachments of an elective Legislature, that is, against our *own* enactments on *ourselves,* is a curiosity in government." Indeed, the first ten amendments leave something to be desired as an orderly statement of rights, probably because, like all compromise measures, they were put together under pressure. The ninth and tenth have nothing to do with rights as this word is generally understood. The First Amendment enumerates three, possibly six, rights; the second, third, and fourth, one each; the fifth and sixth are omnibus paragraphs; the seventh establishes two principles of legal practice; and the eighth enumerates three prohibitions against legal tyranny. It is even more astonishing to remember that until the adoption of the Fourteenth Amendment (1868) the federal Bill of Rights applied to Americans only in their federal capacities, the states being left free to do pretty much as they pleased so long as they retained a republican form of government. Even today only certain provisions in the federal Bill of Rights limit this freedom of the states.

THIS HISTORY is curious, but it is also illuminating. American interest in rights comes and goes; and, moreover, in our national history rights have often had only a pragmatic sanction. They are a matter of more or less, not of absolutes —and I do not refer to the well-worn quotation about crying "Fire!" in a crowded theater. Consider, for instance, the Second Amendment, which guarantees "the right of the people to keep and bear Arms" in the interest of a "well-regulated Militia" "necessary to the security of a free State." Obviously this was intended to prevent citizens being disarmed by a hireling professional army. If, however, any citizen thinks he can use his trusty rifle after the manner of Daniel Boone or the embattled patriots at Moore's Creek Bridge or King's Mountain, he will discover at once how time, custom, law, and the objections of his neighbors combine to cut the plain language of the amendment down to modern size.

In truth the American tradition has never cared much for abstract logic, nor have we characteristically been a people marked in periods of strain by reverence for law. Solemn treaties with Indian nations were at once violated. Mobs destroyed the homes of Stamp Act agents, plundered Loyalist property dur-

HOWARD MUMFORD JONES, professor of English at Harvard University, is the author of "The Pursuit of Happiness" and other books.

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ing the Revolution, tarred and feathered convenient Tories, and in popular uprisings like Shay's Rebellion sought to overthrow the government by force and violence. Virginia City cherishes photographs of the headstones of road agents unlawfully hanged by a vigilante committee perhaps enforcing the law of nature but certainly not the laws of the territory of Montana. The Shepherdson-Graingerford feud and the mob faced down by the cynical but courageous Colonel Sherburn in "Huckleberry Finn" are as typical as Coxey's Army or the embattled farmers preventing foreclosures in Iowa when the sheriff arrived with the papers. Anti-Catholic riots in Charlestown, anti-draft riots in New York, anti-Mormon riots in Illinois prelude anti-Negro riots in Atlanta, Harlem, and Chicago. Contrast standard American behavior in the Homestead Steel strike, the Pullman strike, and the Ludlow coal and iron strike with the orderly fading out of Chartism in 1848 or the picnic atmosphere of the general strike in Great Britain in 1926, and the difference in traditions becomes even clearer.

The fact that the American Civil Liberties Union musters only 25,000 members in a population approaching 170,000,000 is likewise illuminating, if depressing. Persons passionately devoted to civil liberties look upon Senator McCarthy with a jaundiced eye. But the Senator, regardless of tradition or law, is in there pitching, and when you are fighting the savage foe in the manner of Daniel Boone and Leatherstocking, no holds are barred and only scalps count. Lawyers, liberals, philosophers, and others among the effete educated have no business interfering with one who stands at Armageddon and battles for the Lord. So long as any Senator can dramatize himself as an American St. George fighting the Communist Dragon,* anguished appeals to fundamental rights are not going to be wholly effective. Elected representatives of the people are not voting to protect the Dragon in a holy crusade. Our tradition is otherwise.

THERE IS, however, a second traditional American belief that will in the long run come to the assistance of civil rights. This is a compound tradition—sympathy for the under-dog, and a belief in fair play. Even gouging contests in frontier Georgia were governed by a tacit code violation of which removed the citizen from the society of his peers. The basketball "fix" scandal received headlines out of all proportion to the crime if one measures the crime against the serious nature of bribery and corruption in political life, but not out of proportion to our central creed that in sports the rules

of right and wrong must be observed with peculiar spiritual chastity. (Of course, there is also the tradition of the cute trick, but even this is within the rules of the game.) And traditional compassion for Major André, Nurse Cavell, and the sleeping sentinel to whom a highway is dedicated in Vermont is one with such expressions as "Don't cheer, boys, the poor devils are dying." Sympathy for the Rosenbergs was undoubtedly whipped up by the Communists; but it could not have been whipped up as it was, were it not for a lurking feeling that the couple had had a raw deal, and were in truth under-dogs.

In a period when the freedom of individual Americans is so circumscribed by government the battle to retain civil rights, especially in borderline cases, must be pressed with tireless vigor. It is probably true that the legal and philosophic meanings of "rights" are of concern only to the passionate few, but the passionate few have won notable victories in our history, once they have appealed to the general sense of fair play and the national sympathy for the under-dog. The greatest triumph for individual freedom in the national past was, of course, the abolition of slavery, a movement produced by the unsleeping dedication of a minority that would be neither silenced nor denied. Less spectacular achievements like the abolition of imprisonment for debt, the attainment of woman suffrage, or the establishment of adequate public-school systems came about in the same way.

PROPER procedures will be forced upon Congressional committees, unofficial agencies boycotting "reds" in the entertainment world, frightened school boards, and other products of our present siege mentality when, and only when, the passionate minority can persuade public opinion that fair play is violated. "Security" agencies are doing a good deal to help the passionate few to achieve this. If more cases like those of James Kutcher and Dorothy Bailey pile up—each discharged from federal employment without trial or after the travesty of one—it will begin to appear that the rules of the game are really being sabotaged. Already Congressional committees or government agencies have made the mistake of attacking, or seeming to attack, such highly respectable women as Mildred McAfee Horton, and such sacrosanct figures as clergymen known to be dedicated to that most radical of lives, a Christian one. By and by the difficulty of getting even a janitor's job in a federal post office without "clearance" is going to affect the garage man around the corner; by and by just one too many school teachers of long service and social sympathy is going to be discharged; by and by the holding up of passports or of visas is going to affect not merely remote figures like symphony conductors or European scientists but the relatives of Joe Glychz, who can't get into the country because of some quirk in the McCarran Act. It is going to take some time for average Americans to discover that what goes on in Washington is not just a television show but something that affects his basic democratic sympathies. When this happens, and I think I see a drift in that direction, in traditional American fashion we shall check or alter our present notions about "security" for the nation—security that ends only too often as insecurity for the little man.

*Senator McCarthy's latest metaphor is that he is engaged in the most important skunk hunt ever (October 28). The intent of this fragrant figure is, apparently, to indicate not that he who hunts skunks will be defiled, but that the skunk is outside any possible set of game laws; that is, anything and everything is to be permitted the zealous hunter. It is interesting to compare this statement with that of President Abraham Lincoln toward the conclusion of a contest which really endangered the nation and in which the enemy was customarily called "traitors" by the Northern press. "With malice toward none; with charity for all," he said, "let us finish the Civil War."

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II. SUPPRESSION BY LAW

When a Justice of the Supreme Court can declare that the pulsebeat of freedom was never more feeble than it is today, it should be apparent that the American tradition is under severe attack. In our view the attack stems from two sources. On the one hand, the cold war has brought about a preoccupation with national defense and a resulting climate of fear and suspicion which has made possible the enactment of certain measures that threaten to subvert the Constitution. The repeal of these measures, however, would not of itself insure the integrity of the American tradition. For the present danger also stems from sources not directly related to the cold war—this aspect of the danger will be discussed in a later section. The following articles deal with the ugly domestic by-products of the cold war—the Smith Act prosecutions, the federal loyalty program, and the McCarran Internal Security Act. The legal structure of the witch hunt rests on this trinity of measures. Congressional inquiries present a special problem.

The Smith Act Prosecutions

by A. L. Wirin and Sam Rosenwein

WHEN the Supreme Court rendered its decision in *United States* v. *Dennis,* on June 4, 1951, upholding the validity of the Smith Act, Cabell Phillips, Washington correspondent for the New York *Times* wrote (June 10, 1951):

> The decision of the Supreme Court Monday upholding the conviction of the eleven Communist Party leaders is one of the most momentous in the recent history of that tribunal. . . . the inescapable fact remains that, for the first time, a political party in the United States has, to all intents and purposes, been put beyond the pale of the law. That, under any circumstances, is a sobering thought for the citizens of the world's freest democracy. . . . The court has given the Department of Justice a long-awaited green light to go after suspected groups and individuals whom it could not touch as long as the party's dogma enjoyed the protection of legal status. . . . it is no secret that in the internal-security section there is a huge backlog of potential prosecutions under the Smith Act which they [department officials] have been sitting on pending the outcome of this case. . . . It is inconceivable that the Department of Justice, with this devastating new weapon in its hands and under the insistent pressure that comes from powerful segments of Congress and the public, will fail to use it freely. . . . this undoing of the Communist Party has been achieved only by a violent upheaval in our judicial concepts. The disenfranchisement of a political party is not an easy price for Americans to pay for any sort of security.

This was shrewd analysis and accurate prognostication. The box score up to the present writing reads somewhat as follows:

In New York City twenty-one so-called "second string" leaders were indicted about a year after the Dennis decision was rendered. Separate trials were granted for two of these defendants because of their illness or physical disabilities. Four others had not been apprehended at the time the case went to trial —one of these persons has recently been arrested. Two defendants were granted judgments of acquittal by the trial court at the close of the prosecution's case. Of the thirteen who were convicted by the jury, seven received sentences of three years' imprisonment and $6,000 fines, five received sentences of two years' imprisonment and $4,000 fines, and one received a sentence of one year's imprisonment and a $2,000 fine. The convicted defendants are on bail pending appeal to the Court of Appeals for the Second Circuit.

In Baltimore six persons were indicted in January, 1952, and after a comparatively short trial convicted. One received a sentence of five years, one of four years, three of three years each, one of two years. Each was fined $1,000. An appeal to the United States Court of Appeals for the Fourth Circuit was affirmed by a unanimous court. An application to the Supreme Court for a writ of *certiorari* (permission to appeal) was denied, Justices Black and Douglas dissenting without opinion. All defendants have begun to serve their sentences.

In Pittsburgh five persons—one was granted a separate trial—were convicted and given maximum sentences of five years' imprisonment each. One of the defendants had only shortly before been convicted of violation of a state sedition statute and given a sentence of twenty years. All defendants are on bail pending appeal to the Court of Appeals for the Third Circuit.

In Los Angeles the indictment was originally returned against fifteen persons. The trial of one defendant was separated because of his serious illness. The remaining fourteen were convicted, and each received a maximum sentence of five years' imprisonment and a $10,000 fine. They are on bail pending appeal to the Court of Appeals for the Ninth Circuit.

In Hawaii seven defendants were indicted and convicted. Six received maximum sentences of five years' imprisonment and $5,000 fines; one received a sentence of three years and a fine of $2,000. All defendants are on bail pending appeal to the Court of Appeals for the Ninth Circuit.

In Seattle the trial of seven defendants recently ended with the jury acquittal of one, and the conviction of the others. Each received a maximum sentence of five years. Four were fined $1,000 and one $5,000. The convictions have been appealed to the Court of Appeals for

A. L. WIRIN is attorney for the Southern California branch of the American Civil Liberties Union. As private counsel he has represented defendants in the Smith Act prosecutions in both Los Angeles and Hawaii.

SAM ROSENWEIN is a member of the New York bar with a special interest in civil liberties in the courts.

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the Ninth Circuit. Pending appeal the defendants are on bail.

The trial of six defendants has begun in Detroit. In St. Louis the trial of five defendants will probably begin about the first of the year. Since the advent of the new Administration and Attorney General Brownell, prosecutions have been instituted in Philadelphia, where nine persons have been arrested, and in Ohio, where ten are being prosecuted.

In summary, about ninety-two persons have been indicted or face indictment for violation of the Smith Act since the decision in the Dennis case. There have been fifty-one convictions and three acquittals. Of the persons convicted, six have begun the service of their sentences while the others are free pending appeals to the Courts of Appeal in the different circuits.

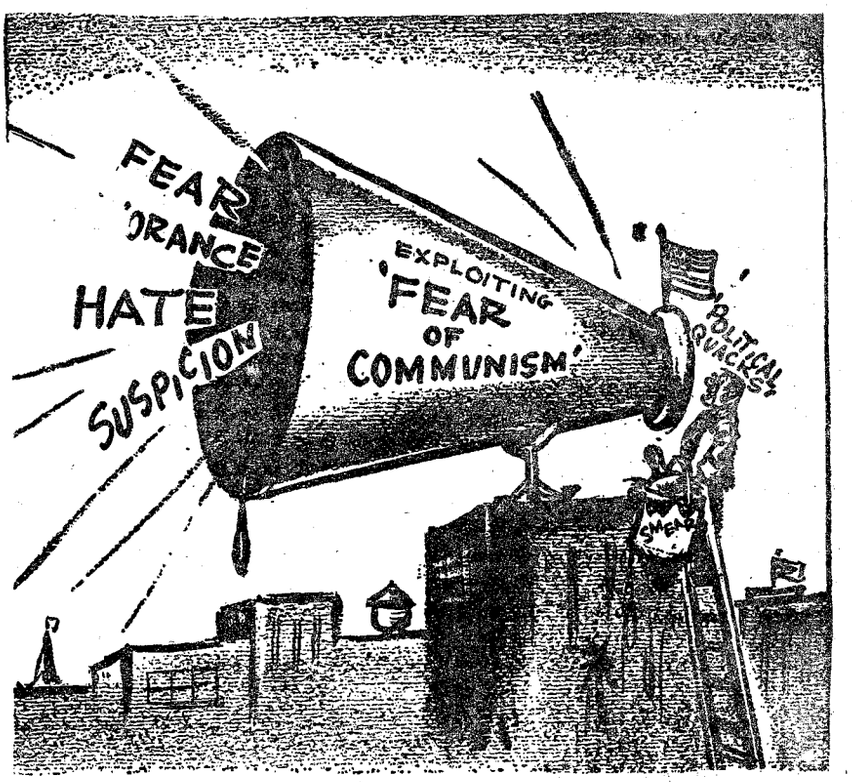
IT IS NOT EASY to classify the defendants who are thus being rounded up in all parts of the country. The common description of "second echelon" or "second string" leaders creates an image of a homogeneous group which does not appear to be substantiated by the evidence adduced at the trials. The records reveal defendants as members and officers of the Communist Party occupying different positions in the various state and local organizations of that party, with varying degrees of responsibility and authority. Some appear to have been members of the party since its inception in the early 1920's; others joined during the depression years of the 30's or after the adoption of the "united front" policies in 1937. A number of the defendants are veterans who served overseas during World War II; all received honorable discharges and some citations and awards for distinguished service. The defendants also include editors and publishers of newspapers and publications alleged to be under Communist Party control, some trade-union officials, persons who have held both elective and appointive public offices, Negro and white leaders in many civic and social organizations, and some professional persons—former school teachers and a lawyer. There have been quite a number of women defendants.

The indictment in each case virtually follows a single form, differing only in names and dates and descriptions of alleged meetings. Each indictment charges the defendants with conspiring among themselves and with the eleven convicted leaders of the party and "divers other persons to the grand jury unknown" to commit offenses prohibited by the Smith Act. This use of the conspiracy weapon is not without significance. The Smith Act makes it an offense punishable by ten years' imprisonment and $10,000 fine to advocate or teach the overthrow of the government of the United States by force or violence; to publish or circulate printed matter advocating the forcible overthrow of the government with intent to so overthrow it; to organize any society, group, or assembly of persons who advocate or teach such proscribed doctrine or to become a member of such organization knowing the purposes thereof. No member or officer of the Communist Party has been prosecuted for the commission of any of these substantive offenses. Instead, the general conspiracy statute has been invoked (five years' maximum) with indictments charging only illegal agreements by the defendants *in the future* to advocate and teach, and to organize as the Communist Party a group which allegedly advocates and teaches, the forcible overthrow of the government.

This exploitation of the conspiracy device affords the prosecution some real procedural advantages. In a decision rendered in 1949 Justice Jackson stated:

> The unavailing protests of courts against the growing habit to indict for conspiracy in lieu of prosecuting for the substantive offense itself, or in addition thereto, suggests that loose practice as to this offense constitutes a serious threat to fairness in our administration of justice. . . . when the trial starts, the accused feels the full impact of the conspiracy strategy . . . [he] often is confronted with a hodgepodge of acts and statements by others which he may never have authorized or intended or even known about but which help to persuade the jury of existence of the conspiracy itself. . . . The naive assumption that prejudicial effects can be overcome by instructions to the jury, . . . all practicing lawyers know to be unmitigated fiction.

THE SMITH ACT trials have confirmed the worst fears entertained by those who saw in the enactment of this peace-time sedition law dangers to the liberties of every person in the United States. Lawful assemblies are being given the "dynamic quality of crime," and men and women are being convicted, not for what they did, but for what they said. As Justice Douglas foresaw in his dissent in the Dennis case, the ancient law of conspiracy is being used to turn speech into seditious conduct. How this is being accomplished should be of interest



Courtesy York *Gazette and Daily*

Furthering Only Their Own Ends

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to lawyers and laymen alike; for nowhere is it more evident than in the Smith Act prosecutions that "the bell" may be tolling for "thee."

The various trials, with peripheral variations, follow a similar pattern. The practice of the prosecution is to put on the stand a group of F. B. I. paid informants and former members of the Communist Party to identify the defendants as members and officers of the Communist Party who were seen at various meetings of the party. Prosecution witnesses usually testify that they saw Communist Party literature, including the works of Marx, Engel, Lenin, and Stalin, sold or distributed at the meetings or discussed in classes conducted by the Communist Party. These writings are then introduced into evidence on the theory that they serve to establish the "nature and character and aims and objectives of the Communist Party."

The books, pamphlets, and periodicals thus introduced may number as many as five hundred exhibits. They cover a wide variety of historical, philosophical, social, and economic ideas and events which could consume a lifetime of diligent study. Most of these writings were before the United States Supreme Court in 1943 when the court reversed a judgment denaturalizing William Schneiderman, an official of the Communist Party in California (recently convicted in the Los Angeles Smith Act prosecution). The court then stated that "political writings are often over-exaggerated polemics bearing the imprint of the period and the place in which written" and noted in that case that the prosecution "with commendable candor" had conceded that "some Communist literature in respect of force and violence is susceptible of an interpretation more rhetorical than literal."

The practice, nevertheless, in the Smith Act prosecutions is to read excerpts from the different volumes, especially those dealing with the events which preceded the Russian Revolution of 1917, with emphasis on such phrases as "proletarian revolution," "dictatorship of the proletariat," "smash the state machinery," "turn the imperialist war into a civil war," and similar phrases carrying a strong emotional impact. The defendants are generally permitted to read any other excerpts from the same books which they feel explain, modify, or contradict the passages read by the prosecution. As a result, almost half of the stenographer's transcripts, which sometimes are as much as 15,000 pages in length, contain a mishmash of quotations from a myriad of books and pamphlets, with emphasis on the "Communist Manifesto," "State and Revolution," "Foundation of Leninism," "History of the Communist Party of the U. S. S. R."

THE WHOLE "battle of quotations" in these Smith Act prosecutions is a futile experience which serves only to pander to emotions and prejudices. A significant fact is that in most cases no attempt is ever made by the prosecution to prove that the particular defendants on trial understood or interpreted these writings as advocating and teaching the forcible overthrow of the government of the United States. The books, and the excerpts, are simply "dumped" on the jury; and the jurors are left free to decide whether the "principles of Marxism-Leninism" are equivalent to the proscribed advocacy and teaching. Since it would take months if not years merely to read the books, let alone to understand them, it is difficult to avoid the conclusion that the Smith Act juries are making their findings concerning the "principles of Marxism-Leninism" on some basis other than full consideration of the documentary evidence.

The professional witnesses, many of whom reappear in the various trials and earn many thousands of dollars for their testimony, serve one other useful function. It is the practice of the prosecutors to ask these witnesses what they heard some Communist teacher or party member say in a class or meeting about the "principles of Marxism-Leninism" or the policies of the Communist Party at a time and place when none of the defendants were present. In nearly every trial the F. B. I. informant relates what some third party—not subject to confrontation or cross-examination—told the F. B. I. informant about the "dictatorship of the proletariat" or "revolutionary change" in a classroom or meeting usually in some city or state far distant from the one where the case is being tried. No proof is offered that the particular defendants knew of such statements, or that either the defendants or the Communist Party ever authorized or ratified the statements. As may be expected under such circumstances, the professional witnesses are beginning to give free rein to their imagination, as is evidenced by the contradictions in their testimony at the different trials.

Such testimony of "third-party declarants"—to use the lawyers' phrase—is of course hearsay; but the trial courts are admitting these declarations or statements into evidence upon the legal principle that the declarations of a third-party conspirator in furtherance of a conspiracy are binding upon all other members of the conspiracy, even if the latter were not present when the statements were made. In the Smith Act prosecutions no effort is made to establish by direct or circumstantial evidence that the third-party declarants and the defendants at the trial actually agreed to teach and advocate the overthrow of the government of the United States by force and violence. How, then, do they become "co-conspirators" and thus warrant the admission of palpably hearsay testimony? The answer of the trial courts is this: they, the unseen third parties and the defendants, are all members and officers of the Communist Party! It should be noted parenthetically that Section 4(f) of the Internal Security Act of 1950 specifically provides that neither the holding of office nor membership in any Communist organization by any person shall constitute per se a violation of any criminal statute.

THE FOREGOING, in broad outline, describes the nature of the evidence now being presented in the Smith Act conspiracy prosecutions—identification of the defendants as members and officers of the Communist Party, readings from Marxist-Leninist books, and the hearsay declarations of alleged teachers and members of the party at meetings and classes. On occasion, some equivocal statement of a particular defendant espousing the "principles of Marxism-Leninism" or the "socialist revolution" is offered into evidence, but it is fair to say that in none of these Smith Act prosecutions has there been substantial evidence of any defendant's specific intent to enter into a conspiracy to advocate and teach the forcible overthrow of the government with intent to accomplish such overthrow as speedily as circumstances would permit.

Most trial courts are permitting the

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cases to go to the jury upon the following theory: Since the jurors may themselves conclude that the "principles of Marxism-Leninism" are the same as the advocacy of the overthrow of the government of the United States by force and violence, and since the Communist Party bases itself upon the principles of Marxism-Leninism, the jurors may infer that the Communist Party advocates and teaches the forcible overthrow of the government. Since the defendants are all long-time members or officers of the Communist Party, the jury may infer that the defendants knew that the Communist Party advocates the forbidden doctrine. Since the defendants assembled and combined in the Communist Party, the jurors may infer that each defendant intentionally entered into a conspiracy to advocate and teach the forcible overthrow of the government. Since the defendants entered into such conspiracy, the jurors may further infer that the defendants actually intended to advocate and teach such unlawful doctrine. And finally, since defendants entered into the conspiracy with such intent, the jurors may infer that each defendant specifically intended to accomplish the overthrow of the government of the United States by force and violence as speedily as circumstances would permit. Every meeting of the Communist Party, every utterance of members or officers, no matter how lawful, may be interpreted by the jury as an "overt act" in furtherance of the implied conspiracy. By this process of piling inference upon inference, juries have been convicting defendants who, so far as the record shows, never uttered a word while they were members of the Communist Party, or if they did, said only what many citizens are saying every day in the week.

The acquittal in the Seattle case may be some indication that juries will not always accept the prosecution's inference theory, and the trial judge, in granting judgment of acquittal for two of the defendants in the New York case, indicated quite clearly that mere proof of long-time membership or officership in the Communist Party would not be sufficient to send the case to the jury.

In trials where "inference" substitutes for proof, the efforts of defendants to prove their innocence, to prove the negative, are largely ineffective. The fact that the proof shows only advocacy and teaching of opinions and ideas normally protected from governmental invasion, together with day-to-day activities quite laudable from the viewpoint of the public welfare, is usually held to be not "within the issues," or, at best, defensive material which the jury is free to disregard. If the proof shows frequent disclaimer of the use of force and violence and specific disavowals in the constitution of the Communist Party, there is always a professional witness to testify that this is mere "Aesopianism" or "double talk." In the present political climate, where a jury is free to infer all the essential ingredients of the offense charged in the indictment without direct proof of an individual defendant's wrongdoing, the verdict is generally foregone. This may perhaps explain why, since the trial in the Dennis case, a hush has fallen over the courtrooms as the trial courts seemingly bend over backward to give the defendants all the "due process" they want.

THE "clear and present danger" rule has in operation and effect become a dead letter. A breach was made in the doctrine when the Supreme Court in the Dennis case substituted the "probable"-danger test for the imminent-danger standard of Justices Holmes and Brandeis. A further breach occurred when the issue was withdrawn from the jury as a question of fact and left to the trial judge to decide as a matter of law. Despite the admonition of the Supreme Court, the trial courts are disregarding each defendant's "power to bring about the evil" and the "nature of his activities" as shown in the record, and are simply parroting Justice Vinson's language in the Dennis case about "the inflammable nature of world conditions" and "the touch-and-go nature of our relations with countries with whom [petitioners] were in the very least ideologically attuned." In effect, the obnoxious "bad tendency" test which preceded the formulation of the clear-and-present-danger rule in 1919 has been revived.

There are other factors which complicate the trials in the Smith Act cases. The constitutional guaranty of reasonable bail in criminal prosecutions, for example, seemed for a time to be in serious danger as trial courts responded to the "hydraulic pressures" of the day. United States commissioners were at one time fixing bail as high as $75,000 and $100,000 in these Smith Act prosecutions. In Los Angeles, following the recommendation of the grand jury which returned the indictment, the trial court fixed bail for each of the fifteen defendants at $50,000, principally because four of the defendants in the Dennis case had failed to surrender themselves in New York City after affirmance of their convictions by the Supreme Court. An appeal to the Court of Appeals was affirmed. *Certiorari* was quickly granted by the Supreme Court, which reversed and directed a new hearing in the District Court for the purpose of fixing reasonable bail. The court concluded that the fixing of such high bail before trial could not "be squared with the statutory and constitutional standards for admission to bail." Justice Jackson, in a concurring opinion, states:

> But the protest charges, and the defect in the proceedings below appears to be, that, provoked by the flight of certain Communists after conviction, the government demands and public opinion supports a use of the bail power to keep Communist defendants in jail before conviction. Thus the amount is said to have been fixed, not as a reasonable assurance of their presence at the trial, but also as an assurance they would remain in jail. There seems reason to believe that this may have been the spirit to which the courts below have yielded, and it is contrary to the whole policy and philosophy of bail.

It is not without interest that after a second hearing, following the Supreme Court decision, the District Court still fixed bail at $50,000 for each defendant, without any additional evidence being adduced, and it was thus necessary to appeal again to the Court of Appeals, where bail was fixed at $10,000 and $5,000 for the different defendants. In the meantime the defendants had spent almost four months in jail, with the result that their efforts to retain counsel, to prepare their defense, to raise funds, and to interview witnesses were considerably hampered.

After the conviction of the Los Angeles defendants the same trial court declined to fix bail pending appeal. The Court of Appeals directed it to hold a hearing and determine whether substantial questions were involved in the appeal—the usual ground for granting bail pending appeal—and

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to fix reasonable bail. The District Court found no "substantial questions" and again denied bail. This time the Court of Appeals, upon its own examination of the case, ruled that there were substantial questions involved and granted bail for each defendant in the sum of $20,000 pending appeal. In Hawaii the District Judge too could find no substantial questions, but again the Court of Appeals disagreed and granted bail, $15,000 each, pending appeal. Since the Supreme Court decision on bail in *Stack* v. *Boyle,* bail in Smith Act prosecutions has been averaging about $10,000 for each defendant prior to trial and $20,000 pending appeal.

IT IS STILL claimed in some of the cases that certain representative groups in the community are being systematically excluded from jury service. No searching examination of the qualifications of the jurors at the time of their selection is normally permitted. The practice is for the lawyers to submit proposed questions to the court, who in turn examines the jury. The opportunity to probe for hidden bias and prejudice is fairly well forestalled.

Defendants who take the stand are invariably asked to identify persons as members of the Communist Party. Since the defendants are reluctant to subject others to possible prosecution and certain loss of job, they have generally declined to answer. This has brought on charges of civil and criminal contempt, the punishment usually being imprisonment at least for the duration of the trial. In Los Angeles one of the defendants, Oleta O'Connor Yates, who declined on cross-examination to identify certain persons as members of the Communist Party was jailed for the duration of the trial and then at the conclusion of her trial given sentences of one and three years' imprisonment for alleged criminal contempt, in addition to the five years' sentence after conviction on the Smith Act charge. These sentences for criminal contempt were also in addition to an order that Mrs. Yates continue to be jailed, pending her appeal from the Smith Act conviction, until the appeal was concluded, and in the event her appeal was successful and a new trial ordered, that she be further imprisoned until she answered questions which might be put to her in such new trial. All these contempt sentences are on appeal; and Mrs. Yates is on bail pending those appeals.

There have been other sentences for civil and criminal contempt. The latest was on October 19, 1953, when the Seattle trial court imposed a three-year prison term on Dr. Herbert J. Phillips, former University of Washington professor, who was called as an expert witness on communism by the defense, and on two defendants who took the stand, Terry Pettus and John Daschbach. In the cases of the latter two, the pattern established by the trial judge in the Los Angeles Smith Act case is followed, the three-year sentences being in addition to the five-year sentence imposed for the convictions under the Smith Act. These sentences too are on appeal and the defendants on bail pending the appeal. Since the price of taking the stand is to become an informer, many defendants appear ready to forgo the giving of testimony in their own behalf.

While publicity will always attend Smith Act prosecutions, it would appear fair to grant continuances of the trial where newspapers make it a practice to publish in serialized form some book written by a former member of the Communist Party just as the trial is about to commence. In Los Angeles publication in serial form of the book "I Lead Three Lives," by Herbert A. Phillbrick, began in the Los Angeles *Times* ten days before the commencement of the trial. A request for continuance was denied. In the same case, just at the conclusion of the arguments of counsel and before the case went to the jury, F. B. I. Director J. Edgar Hoover authorized publication of a sixteen-page report setting forth "documentary proof that the Communist Party, U. S. A., teaches and advocates the overthrow and destruction of the United States government by force and violence." This document, dubbed by the newspapers a "long secret F. B. I. report," received wide press, radio, and television coverage. A motion for mistrial was denied.

Although the Department of Justice concedes wire-tapping in "internal-security cases," no trial court has yet granted defendants a preliminary hear-

Decalogue of McCarthyism

SENATOR HERBERT H. LEHMAN

Let us look more closely at McCarthyism. Let us analyze the characteristics of those who blindly follow its doctrine, the tell-tale marks which identify them—marks which, by no great coincidence, are also those of the Communists:

1. They use and abuse the constitutional protections for the free exchange of ideas but seek to deny these protections to all others.

2. They insist that they and they alone possess the power to determine what is right for everybody.

3. They appeal to fear and passion, never to reason; they do not persuade, they threaten.

4. They understand only dictation and domination, never cooperation and deliberation.

5. They are completely intolerant of opposition or deviation, identifying all opposition as heresy, which they would stamp out by threat and terror.

6. They use and justify the use of any means to achieve their particular ends . . . ends which they consider absolute and unchangeable. Without scruple or compunction they ride roughshod over truth, honor, dignity, and integrity.

7. They fear and distrust new or foreign people and new or foreign ideas; they believe in iron curtains and isolation.

8. They drape themselves in the cloak of patriotism but cynically destroy the soul and spirit of the nation whose name they invoke.

9. They avow respect for religion but stamp ruthlessly under foot all standards of morality; they threaten to subject to their inquisitions even the clergy and the ministry.

10. They are, in short, the arrogant and the absolute, who sit in solemn judgment on the loyalty and morality of their fellow-citizens, all humbled by the sheer effrontery of such a usurpation of Conscience and of God.

This is the decalogue of their characteristics.

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ing to determine whether the evidence adduced before the grand jury or trial jury has been obtained in violation of law. In Hawaii, for example, specific evidence was presented by sworn affidavit to the District Court showing that the telephone wires of one of the defendants had been tapped prior to indictment. Although there was no denial of this wire-tapping by the prosecutor or the F. B. I., the court refused to hold any hearing.

THE MOST ominous recent development in the Smith Act cases was the comment by the Seattle trial court, on sentencing the defendants, that if he had occasion to preside over a similar case in the future he would be inclined to take "judicial notice" of the prosecution's version of Communist Party teachings and thus reduce substantially the volume of evidence offered by the prosecution as to the nature and purposes of the Communist Party.

Faced by opposition from liberal as well as some conservative public opinion, Congress did not outlaw the Communist Party by legislative action, but here is outlawry by judicial fiat.

The foregoing will perhaps make clear how serious are the questions now presented for decision to the various United States Courts of Appeal in the country. The affirmance of the Baltimore convictions and the denial of *certiorari* by the Supreme Court are of course an ominous portent, although the Supreme Court has many times stated that the denial of *certiorari* does not necessarily mean approval of what has been said or done in the court below, and no court of coordinate jurisdiction is bound by the decision of another tribunal. One can only hope that the Courts of Appeal and, if necessary, the Supreme Court will reexamine the whole question of the validity of the Smith Act and the prosecutions thereunder, for if the present trend continues, "the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means" may disappear. As Chief Justice Charles Evans Hughes warned almost two decades ago, this would indeed undermine "the security of the Republic, the very foundation of constitutional government."

The Press and the Bill of Rights

by Irving Dilliard

WHAT I think about the state of our liberties is the blackest thought I have had in my lifetime. I am convinced that the Bill of Rights would not be submitted and ratified as part of the Constitution were it presented in Congress today. I stated my reasons for this belief on November 5 in the second annual Elijah Parish Lovejoy lecture at Colby College, Waterville, Maine, in memory of America's first free-press martyr, who was assassinated by an anti-Abolitionist mob at Alton, Illinois, on November 7, 1837. Since very few newspapers printed my remarks, I can repeat a few of them with little danger of duplication for readers of *The Nation*.

"No amendment to the Constitution can be adopted without a fighting campaign, and I do not find the press today fighting for the principles and causes that the Bill of Rights embodies. . . . I find no reason to believe therefore that the press would lead a national campaign to adopt the Bill of Rights were its protections and guaranties introduced in Congress today.

"Take, for example, the very first of the historic ten amendments. This is the only one which says that 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.'

"There is widespread indifference among newspapers generally to freedom of the press itself, as demonstrated by their attitude in the Wechsler-McCarthy case. Many newspapers never have an editorial which touches the issue of the separation of church and state. Freedom of speech for the individual is often trespassed on without causing so much as a word of protest.

"The right of the people to be secure in their houses and their papers against unreasonable searches and seizures; the guaranty that no warrants shall issue but upon probable cause, supported by an oath or an affirmation particularly describing the place to be searched and the person or things to be seized—these basic protections are trampled time and again, and a large part of the press takes no notice.

"The Fifth Amendment provides that no person 'shall be compelled in any criminal case to be a witness against himself.' This basic protection of an accused person is grounded deep in history. . . . Yet it could not be made a part of the Constitution today. Indeed, there is a campaign on in Washington, supported by many newspapers, to undercut the guaranty against self-incrimination if not to eliminate it altogether. And in saying this I do not approve of the Fifth Amendment's abuse by those who hide behind it.

"I could go through the other guaranties in the Bill of Rights one by one—the guaranty of assistance of counsel for the defense of an accused person, the prohibition against excessive bail, and so on. Many an accused person has gone to prison in recent years lacking assistance of counsel to tell him of his rights, many a time excessive bail is required—with little or no objection in the press.

"In the last decade these protections have been chipped away in local, state, and federal courts, with the final approval, I regret to say, of the United States Supreme Court. Yet few newspapers print enough of Supreme Court opinions in civil-liberties cases for readers to have any notion of what is happening to their rights. . . ."

To this I add that there are of course some editors who are devoted to freedom of the press and the Bill of Rights. But judging by a fair and more or less continuous sampling, they are the exceptions. The rest can prove me wrong very easily: they have only to become jealous guardians of the historic liberties and rights against whose invasion they now almost never raise a finger.

IRVING DILLIARD is editor of the editorial page of the St. Louis Post-Dispatch.

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The Strange Case of Miss X

Anonymous

A FEW days ago, after months of investigation by the F. B. I., a friend of mine was notified that she had been cleared as a loyalty risk and was "suitable" for federal employment. This long-awaited clearance is of little interest to her at the moment: she is in a hospital undergoing shock treatment for a mental collapse brought on by the strain of the investigation.

Perhaps she should have been made of sterner stuff, particularly since her clearance shows that every aspect of her life, past and present, can bear minute inspection. But as one who has been through the ordeal by investigation I understand only too well the state of mind that led to her collapse. Those of us who have grown up in the democratic tradition do not make an easy or rapid psychological adjustment to a police-state atmosphere.

The number of federal employees who have run the gauntlet of investigation as risks to our country's security has already reached many thousand. Most of us, it is true, have been returned to our government positions with loyalty clearances. But the experience will haunt us as long as we live, for we have in effect been on trial for treason. And in the defense which we have had to make we have been denied the simplest safeguards that every civilized nation extends to the prisoner in the dock charged with this gravest of all crimes. We have been given no clear or evidential statement of the charges against us. We have not been allowed to face our accusers or even to know who they are. We have been, by a reversal of all democratic procedures of justice, regarded as guilty unless we could prove our innocence.

I recognize that our government must take reasonable and proper security precautions in these dangerous times. But when this legitimate and essential inquiry broadens into investigations touching upon the private lives and mental processes of several hundred thousand suspects, as it has in the United States today, common sense is abandoned and a nightmare of inquisition is set afoot. In my pre-investigation days I could not have imagined the fantastic lengths to which the loyalty investigations might go. Like many others, I thought that suppression of our fundamental rights could not happen here. In Nazi Germany, yes, and in Communist Russia, but not in the United States of America.

MY PERSONAL experience with the investigative process began during the war years, when I entered the government as a war-service employee. I had never been a Communist or Communist sympathizer. But during the late 1930's I had joined the League for Peace and Democracy, which several years later and long after it had gone out of existence was placed on the Attorney General's list of Communist organizations.

The league is the only organization of any kind to which I have ever belonged, except the Methodist church. But my conscience was so deeply aroused by the Nazi atrocities of the 1930's that I felt morally compelled to take a stand against them with fellow-Americans who shared my horror at this evil. I joined the league as an anti-fascist.

I took a government job in September, 1942. A few months later I was called to the Investigations Office and asked about my membership in the league, which I freely acknowledged. I was also questioned about my alleged membership in the Washington Committee for Democratic Action, an organization to which I had never belonged and of which I knew nothing. The F. B. I. man who interviewed me could not have treated a notorious criminal with colder contempt. In reply to my denial of membership in the Committee for Democratic Action, he asked how I could account for the fact that my name was on its mailing list if I had not been a member. I suggested that the committee might have used the membership list of the League for Peace and Democracy as its mailing list. I had laid myself open to the implication of "guilt," he informed me, by belonging to such an organization as the league. "Caesar's wife should be above reproach," he added, "and you can't fall in the mire without coming up muddy." I reminded him that I was not guilty of anything; I had exercised my privilege as a free American in joining the league, and the league had stood years ago for the very principles that our whole nation was now fighting for.

At the close of the interview he dictated to his secretary the gist of our conversation—my acknowledgment of membership in the league and my denial of membership in the Washington committee—and I signed the transcript. A few weeks later I received official notice that I had been rated eligible for federal employment "subject to satisfactory fingerprint clearance." My fingerprints apparently offered no difficulties, for I served the government without question until after the end of the war, when I resigned to accept a better position with a non-governmental organization.

YOU WOULD THINK that suspicion of my loyalty as determining my fitness for government employment might properly end here. But that is not the way these investigations operate.

In January, 1951, at the urgent request of government officials, I reentered federal employment to organize for one of the emergency agencies the same type of service that I had headed during the war years. In the following September I received from the Loyalty Board an interrogatory, vaguely described in the covering form letter as "based on information received," which I was instructed to return, answered and notarized, within ten days. The two opening questions in this interrogatory were the same as those which had been addressed to me nearly ten years earlier—questions concerning my "re-

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ported" membership in the League for Peace and Democracy and in the Washington Committee for Democratic Action. In reply to these I again acknowledged membership in the league and again denied that I had ever been a member of the committee.

The next two questions introduced new charges. The first, with rather confusing tense references and a sweeping inference, read as follows:

The commission has received information to the effect that you were sympathetic toward the Communist Party and that you vigorously defended Communists, including Alger Hiss, portraying him as an innocent victim. If the above allegations are true, in whole or in part, please furnish full and complete information below. Include in your answer whether or not you had maintained a sympathetic association with the Communist Party.

In reply to this, I wrote:

I sympathized with Alger Hiss because I was not convinced that he was guilty and because I was extremely reluctant to accept the testimony of a man like Whittaker Chambers. This does not mean that I have any sympathy whatever with perjury or treason. Many Americans, including some of the jury at the first trial, shared my views on Hiss.

I have never defended Communists or communism, either "vigorously" or otherwise, for I am contemptuous of the slave mind, whether Communist or fascist. My own political views, in so far as they are formulated, consist of a firm faith in the gradual and peaceful realization of the democratic ideal. For this very reason, however, along with Justice Black and Justice Douglas, I am disturbed by the present tendency to deny, even to Communists, the traditional rights of all Americans to freedom of thought and freedom of speech.

I have not now, and have never had, a "sympathetic association with the Communist Party." I have no sympathy with any form of violence, aggression, or tyranny over the mind of man.

THE FINAL CHARGE against me was that on my latest application for federal employment (Form 57) I had answered in the negative to Question 27: "Are you now, or have you ever been, a member of the Communist Party, U. S. A., or any Communist organization?" This charge concluded:

In view of your reported membership in the American League for Peace and Democracy and the Washington Committee for Democratic Action, Communist organizations, please explain fully your reasons for failing to answer Question 27 in the affirmative.

A copy of the Attorney General's list, designating these two organizations as Communist, was attached. My reply to this charge was as follows:

To the best of my recollection, the application form which I filled out made no reference to the Attorney General's list. I can honestly say that it did not occur to me to give information on my membership in the League for Peace and Democracy in reply to Question 27 as stated.

It would have been obviously absurd for me to attempt any deception on this point, for I was fully aware that my membership in the league was a matter of government record. As a war-service employee I was called in for investigation on the basis of this membership, and I was later notified that I had been cleared for government employment.

I have pointed out in reply to Question 2 that I was never a member of the Washington Committee for Democratic Action.

The interrogatory ended with an invitation for me to "note hereon any comments you desire to make regarding your loyalty to the United States which you believe should be considered in determining your suitability for federal employment." Revolted by their expectation that I would shape up a little essay of self-adulation, I replied:

I have puzzled over this section of your interrogatory for a long time, because I wish to cooperate fully with the Loyalty Board and furnish all information at my command relevant to my suitability for federal employment. But even at the risk of my livelihood I find it impossible to comply with your request and keep my self-respect as an American citizen. I know that I am a good American and that there is nothing in my life to the contrary; but I do not know how, with any propriety, to count the ways and make a little list of my particular virtues that would establish this fact.

An interrogatory of this sort has one inescapable and, I think, potentially morbid psychological effect upon its subject, quite apart from his rational anxiety over its threat to his livelihood and reputation. Each charge against him is couched in mysterious terms—"It is reported that . . ."; "The commission has received information to the effect that . . ."

For hours after I received my interrogatory I found myself wondering who was my unknown enemy. I tried desperately to recall every occasion on which I had discussed the Hiss case and with whom. Finally I resolved to learn, as men and women in totalitarian countries have learned, to speak my thoughts on public matters with great discretion in the future.

AFTER SENDING the Loyalty Board my reply in September, 1951, I waited anxiously until the following January for further word on my case. It came in the form of a letter to the Director of Personnel in my department—a carbon copy of which was sent to me—ordering that I be dismissed from my government post. I had been rated eligible on loyalty, the letter said, but ineligible on suitability for federal employment. The reason given for this judgment was that I had made "an apparently deliberate false statement" on my application form in answering "No" to Question 27 regarding present or past membership in the Communist Party, U. S. A., or any Communist organization. The evidential findings on which this decision was based were summarized as follows:

Investigation revealed that, as of the winter of 1940-41, her name appeared on the list of the members of the Washington Committee for Democratic Action. The commission's files show that she was questioned about this membership in connection with a previous period of federal employment at which time she denied that she had been a member of the Washington Committee for Democratic Action but admitted that she had been a member of the American League for Peace and Democracy. The Washington Committee for Democratic Action succeeded the American League for Peace and Democracy upon the dissolution of the latter, and both organizations have been cited by the Attorney General as coming within the purview of E. O. 9835.

The Loyalty Board was willing to grant my case further consideration, the letter concluded, if either my department or I presented "additional facts" in writing within thirty days; and pending decision of such an appeal my department could, at its discretion, retain my services.

I had no additional facts to present. I had already given all information that had been asked of me, and everyone that I had ever known socially or professionally had also been questioned minutely about me, as I learned from

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many sources. Even the girls at the telephone desk in the apartment house where I live had been asked about my personal habits and private life.

Sick in spirit and body—my medical costs for what my doctor called "nervous exhaustion" now amounted to almost $200—I was ready to give up at this stage and leave government service with an indelible stigma on my name. Many persons who are equally innocent of the charges brought against them by the security officials do undoubtedly drop the fight out of sheer exhaustion and cynical despair; they swell the statistics, of course, on the number of dangerous government employees from whom America has been saved. My salvation lay in the fact—I might almost say, in the accident—that the director of my office was a man of moral courage. Such courage is rare in Washington nowadays, for even high government officials are cowed by the spirit of inquisition. My director urged me not to quit the fight, and upon his persuasion I replied to the Loyalty Board's ultimatum. He also wrote to the board, attesting to the integrity of my character and to the faithfulness and competence with which I had performed my duties.

In my reply I stated at the outset that I had no additional facts upon which to request further consideration of my case, for all the facts about me were already at the board's disposal. The body of my defense was little more than a reiteration of points which I had already made in reply to the board's interrogatory.

SIX WEEKS after the order for my dismissal was issued, I received my last communication, to date, bearing upon the question of my suitability for government employment. In it I was informed that the original decision on me had been reversed and that the request for my dismissal was being withdrawn in view of the additional evidence submitted by me and the representations made in my behalf.

The decision to spare me must have been based on exactly the same facts as the decision to destroy me. I could not escape the conclusion, therefore, that my fate, whether for good or evil, was being determined by an arbitrary and capricious power. Moreover, although my last-minute rescue did lift from my mind a heavy weight of anxiety over my immediate future, it offered me no assurance that the great question was now settled and that I would be allowed to live out the rest of my simple, quiet, harmless little life in peace. My apprehension on this point was well justified, as the newly formulated security program indicates. This program, which went into effect on May 27, 1953, provides for the reopening and review of all old cases in which, as in mine, "field investigations" have been made by the F. B. I. If I remain in the federal service, therefore, I must stand ready to play the role of mouse for a third time in this cat-and-mouse game with the security officials.

The avowed intention to reopen some fifteen thousand cases like mine shows that the new inquisitors will not be outdone by their predecessors in violating the traditions of freedom. In spite of differences in emphasis and procedure, the basic pattern remains the same: free opinion under fire, lawful association a ground for suspicion, discharge from federal service on the undisclosed testimony of unnamed informers. The inquiry, however, will invade private lives even more extensively than under the earlier program, and the safeguards that previously existed in provisions for review and appeal of the charges have been removed. Attorney General Brownell has said that government employment is a privilege, not a right. That may be so. But surely even a government employee has a right to something better than dismissal and disgrace as a security risk to his country because he is said to have remarked to somebody somewhere that he does not subscribe to the political philosophy of the junior Senator from Wisconsin.

As an American I have faith in the people. In this anxious period of real and imagined danger, they have been temporarily misled by demagogy into a mass hysteria that victimizes the social-minded and unorthodox members of the community. But I am confident that the senseless repression will pass, like the Salem witchcraft madness, in a wave of revulsion against its excesses, and that America will again dare to be the land of the free, the last best hope of men.

Those Who Speak Loudest

SENATOR MARGARET CHASE SMITH

I think it is high time for the United States Senate and its members to do some soul searching—for us to weigh our consciences—on the way we are performing our duty to the people of America, on the way we are using or abusing our individual powers and privileges. I think that it is high time we remembered that we have sworn to uphold and defend the Constitution. I think that it is high time we remembered that the Constitution, as amended, speaks not only of freedom of speech but also of trial by jury instead of trial by accusation.

Whether it be a criminal prosecution in court or a character prosecution in the Senate, there is little practical distinction when the life of a person has been ruined.

Those of us who shout the loudest about Americanism in making character assassinations are all too frequently those who, by our own words and acts, ignore some of the basic principles of Americanism: namely, the right to criticize; the right to hold unpopular beliefs; the right to protest; the right of independent thought. The exercise of these rights should not cost one single American citizen his reputation or his right to a livelihood, nor should he be in danger of losing his reputation or livelihood merely because he happens to know someone who holds unpopular beliefs—who of us doesn't? Otherwise none of us could call our souls our own. Otherwise thought control would have set in.

The American people are sick and tired of being afraid to speak their minds lest they be politically smeared as "Communists" or "fascists" by their opponents. Freedom of speech is not what it used to be in America. It has been so abused by some that it is not exercised by others.

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Tooling Up for Mass Repression

by Laurent B. Frantz

EVEN persons acutely conscious of the importance of civil liberties are usually but dimly aware of the existence of the Subversive Activities Control Board. Most Americans have probably never heard of it. The newspapers have largely ignored it. Yet this tribunal may have a more disastrous impact on traditional American liberties than all the sedition legislation, spy scares, "loyalty" tests and oaths, and investigations of opinion that have preceded it.

It is sixteen years since Martin Dies, the premature McCarthyite, made the seminal discovery that Communists support most of the short-range objectives of progressives, liberals, New Dealers, and trade unionists, and that that fact may profitably be confused with support by the latter groups for the long-range objectives of the Communists. American reaction in the intervening years has been chiefly engaged in exploring the political potentialities of this false equation. A governmental board empowered to decide what activities are "subversive" and to control them was the natural outcome.

Yet while there has been no dramatic break in the line of development, the Subversive Activities Control Board represents a significant change of pace. As Franklin Roosevelt once noted, "the judicial process requires to be supplemented by the administrative tribunal wherever there is a necessity for deciding issues on a quantity-production basis." We are moving from political trials of individuals to political trials of groups and movements. Repression is tooling up for mass production.

The board derives its existence and powers from the McCarran Act, more formally known as the Internal Security Act of 1950. This was an omnibus measure, produced when the Eighty-first Congress, puzzled by the relative merits of several rival schemes for the curtailment of liberty, resolved the matter by combining them all into one. The part of the act which creates the board and defines its functions is a revision of the Mundt-Nixon bill which the House Committee on Un-American Activities proposed to Congress in 1948.

The committee offered its original bill as an alternative to proposals that the Communist Party be openly outlawed. A possible element in its calculation was the fact that its only previous legislative effort had been held unconstitutional as a "bill of attainder," which means that it imposed punishment based on a legislative finding of guilt. Representative (now Vice-President) Richard M. Nixon, a member of the committee and co-author of the original bill, testifying later in favor of the measure finally adopted, stated: ". . . we came to the conclusion that naming the Communist Party by name and attempting to build the entire registration provisions around such a definition was an unconstitutional approach, and consequently the committee attempted to find a legislative device for meeting the problem in a constitutional manner."

This bit of official history is revealing, but it evidently does not tell the whole story. One does not create and staff a permanent governmental body for the trial of a single case. The Communist Party, after all, can be tried only once and then the board must devote itself to the pursuit of organizations whose objectives are more immediate and have at least some non-Communist support. Thus its long-range function must necessarily be the application of Mr. Dies's principle that anything from civil liberties to rent control is subversive if the Communists are for it.

The "legislative device" invented by the House Committee on Un-American Activities begins with a series of Congressional findings on the evil intentions of "the world Communist movement" and "the Communist movement in the United States." The fact that this eloquent denunciation does not refer to the Communist Party by name is supposed to insulate it from constitutional objections to legislative findings of guilt.

EQUIPPED WITH these prefabricated opinions on the significance of the matters to be adjudicated, the board sits in judgment on any organization which the Attorney General sees fit to hale before it. If it finds an association to be a "Communist action organization" (a term apparently intended to refer only to the Communist Party) or a "Communist front," it does not formally proscribe it. It merely orders the organization to register. The distinction, however, seems to be largely theoretical. In view of the descriptions embodied in the act and the legal and practical consequences of such a registration, the order is, in effect, that the organization plead guilty to being a public enemy and extend its chin to receive the consequences.

"Fronts" must list officers and sources of funds. "Action" organizations must list these, plus members and all who have been members during the preceding twelve months. It seems probable, though the act does not make this wholly clear, that "fronts" must also give what amounts to a list of members by itemizing the source of all dues payments. All lists must be renewed annually.

In connection with other parts of the act, these lists may be of sinister significance. Thus, Section 4(a) makes it a felony, subject to ten years' imprisonment and a $10,000 fine, "for any person knowingly to combine, conspire, or agree with any other person to perform any act which would substantially contribute to the establishment within the United States of a totalitarian dictatorship" under foreign control. This is by far the vaguest and most sweeping sedition statute ever enacted in the United States. It could fairly easily be

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LAURENT B. FRANTZ was co-author with Norman Redlich of the widely read article Does Silence Mean Guilt? in The Nation *of June 6.*

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construed to apply to such acts as selling the *Daily Worker,* campaigning for a Communist candidate, contributing to the legal defense of an accused Communist, or petitioning for the repeal of the Internal Security Act of 1950. The prosecutor, moreover, need not restrict himself to past acts. He can select any organizational objective, however remote, as an "act" which all members have "combined, conspired, or agreed" to perform. Fearful that this section might cause the registration provisions to be held unconstitutional as involving compulsory self-incrimination, the drafters have provided that registration of any person under the act shall not be received in evidence against him in a Section 4(a) prosecution. Nothing, however, prevents the prosecutor from using the registration list as a source of leads and of possible defendants.

Any such list would also have significance in connection with Title II of the act, which provides that in case of invasion, declaration of war, or insurrection in aid of a foreign enemy the President may proclaim an "internal-security emergency." When such proclamation is in effect, the Attorney General is "authorized to apprehend and by order detain" for the duration of the emergency "each person as to whom there is reasonable ground to believe that such person probably will engage in, or probably will conspire with others to engage in, acts of espionage or of sabotage." Although six camps have already been placed in readiness, this provision seems to be little known as yet, even to lawyers. A report on it produced a major sensation at a recent conference of the California state bar. Members or supporters of any organization which complied with a registration order would clearly form a handy check list of candidates for the concentration camp.

Members of registered organizations would be under automatic disabilities with respect to the use of passports and eligibility for government or defense employment. But the most pervasive and coercive effect of registration would be to supply a government-sponsored black list of persons who, in the name of patriotism, could be systematically denied an opportunity to earn a living.

If the organization survived at all after being compelled to subject its members and supporters to such reprisals, it would lead a branded existence, somewhat reminiscent of the time when Jews were compelled to wear the Star of David for easy identification. For example, anything sent through the mail and intended for two or more persons would have to be stamped "Disseminated by ——, a Communist organization." Since this must appear both on the document and on the outside wrapper, it clearly is intended not only to warn the recipient of threatened ideological contamination but also, if possible, to frighten him into requesting that his name be removed from the mailing list. A "front" organization which existed for some limited objective like rent control, civil liberties, or aid to refugees from Franco could function only by constantly red-baiting its own program. It would thus lose whatever effectiveness it might have had, either to Communists or to non-Communists, as a vehicle for that program.

THESE CONSEQUENCES of registration are not important in themselves, since there are unlikely to be any registrations. They are important because their total impact makes it a fairly safe bet that no organization will ever prefer registration to going out of existence—the drafters of the bill must have known this and taken it into account. If this is true, arguments that the act will "force Communist activities into the open" are either naive or dishonest. Efforts to justify the measure by reference to compulsory registration of lobbyists and reporting of political-campaign contributions rest on a false analogy. The registration provisions are merely a "legislative device" for accomplishing one thing while pretending to do another.

Non-compliance with a registration order, however, brings into view the act's real teeth, as distinguished from its numerous false ones. Failure to register makes the organization and each officer under a duty to register it subject to a $10,000 fine, plus five years' imprisonment. Members can be ordered to register personally and upon failure to do so are subject to the same penalties. Since each day of failure to register is a separate offense, fines sufficient to convert all the organization's assets into government property—and prison terms sufficient to keep the individuals behind bars for life—can be accumulated in a few weeks.

Senator McCarran

This last step in the "legislative device" is the application of an approach new in our law but being resorted to with increasing frequency. It may, until a better name is found, be called the go-hang-yourself technique. It consists in ordering someone, on the ground that he is an undesirable character, to take some action highly injurious to himself. You then punish him, not for being an undesirable character, but for disobeying the order. Another example, found elsewhere in this same McCarran Act, is a provision making it a felony for an alien under final order of deportation to fail to make timely and good-faith efforts to deport himself. The use of economic sanctions to punish persons unwilling to testify against themselves is an instance of the same tendency. Its effect, in the McCarran Act registration provisions, is that a voluntary association may be hounded out of existence, not for anything it has been or done, but for its refusal to commit suicide when so ordered.

THE administration of this remarkable piece of legislation is in the hands, not of the Subversive Activities Control Board, but of the Attorney General. As the hearing tribunal and fact-finder, however, the board has important authority to determine the shape and limits of what the Attorney General will do. After its creation in Oc-

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tober, 1950, the board spent more than two years on the petition of the Attorney General that the Communist Party be ordered to register as a "Communist action organization." The stenographic record of this proceeding ran 14,413 pages and there were 507 exhibits, many of them full-length books. To date the Communist Party is the only organization against which the board has issued an order, but the Attorney General has filed petitions to proceed with hearings and findings against twelve "front" organizations. The first year was devoted not so much to the Communist Party case, however, as to the systematic McCarranization of the board, under personal supervision of the Democratic McCarthy from Nevada.

Senator McCarran was in the peculiar position of being the sponsor and nominal author of legislation finding "the Communist movement in the United States" to be an agency of a foreign power and at the same time the chairman of the committee passing on the names of board members appointed by the President to make an impartial determination as to whether the Senator's findings were correct. He took full advantage of this position. Senate confirmation of the board was withheld for nearly a year—during most of which time the Communist Party case was on trial before persons uncomfortably awaiting confirmation—before McCarran was finally satisfied.

THE FIRST chairman of the board—and Senator McCarran's first target—was Seth W. Richardson, a highly respected and very conservative Republican. The main charge against him was that as chairman of the government's Loyalty Review Board he had shown "softness" toward "Communists" by permitting clearance of too high a proportion of government employees accused of "disloyalty." He was also suspected of softness toward New Dealers, since he had been counsel to the investigating committee headed by Owen J. Roberts, Republican former Supreme Court justice, which failed to find the Roosevelt Administration guilty of culpable negligence in connection with the Pearl Harbor disaster. Like many of the government employees whose cases he had reviewed, Mr. Richardson was also up against a "sympathetic association" charge: he was a former law partner of Joseph E. Davies, author of "Mission to Moscow," an un-McCarranite book. There were no hearings. After eight months in office Mr. Richardson resigned unconfirmed, for reasons of health.

Charles M. LaFollette, one of the original and still unconfirmed board members, was appointed acting chairman after he had served as chairman of the panel hearing the Communist Party case. Mr. LaFollette, however, was also a "sympathetic association" case, having been an officer of Americans for Democratic Action, an organization which is anti-Communist but not anti-Communist enough to suit Senator McCarran.

The subcommittee studying the confirmation of board members actually voted to request the F. B. I. files on each of President Truman's appointees. The Communist Party, contending that a board exposed to such pressures could not be expected to show the impartiality formally required of it, tried to get the hearings delayed pending Senate confirmation of the nominees, but the board denied the motion.

The Communist Party was not alone in finding an inconsistency between the board's uncomfortable situation and its responsibilities. The Washington *Post* commented editorially:

> There is no doubt, as the board's chairman, Seth Richardson, declared, that "the board has lawful power to convene this hearing." Unhappily, however, there is a great deal of force to the contention put forward by Vito Marcantonio [counsel for the Communist Party] that "this board sits in jeopardy, and if at any time it takes a view contrary to that of the chairman of the Senate committee (Senator Pat McCarran) which is to pass on its nominations the members may never be confirmed in the positions to which they have been appointed." . . . The board entirely lacks the independence necessary to its quasi-judicial function.

Although the board uniformly denied all motions made in behalf of the Communist Party, the ultra-rightists in Congress remained dissatisfied. There was an attempt in the House to eliminate the board's budget from the appropriations bill on the ground that its members were not "interested in fighting communism." This move failed, but

Courtesy St. Louis *Post-Dispatch*

The Road to Ruin

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the $620,000 requested for the board by President Truman was cut to $235,000.

Mr. LaFollette at one point withdrew as chairman of the hearing panel, charging that government counsel treated him with "disdain" and communicated this attitude to government witnesses, so that he was no longer able to conduct an orderly hearing.

Ultimately, the four members of the board who remained after the Richardson resignation were summoned to the Capitol for a "get acquainted" meeting with the members of the Senate Internal Security subcommittee. After this interesting but unfortunately unrecorded session, three of the four were at last confirmed, but no action was taken on the nomination of LaFollette. When the three were confirmed, the board had been in existence more than nine months, the Communist Party case had been before it more than eight months, and the actual hearing of testimony had gone on more than three months.

On withdrawing from the panel, Mr. LaFollette remarked of his fellow-member, Peter Campbell Brown, formerly of the staff of the Department of Justice: "We will have speedier hearings, I am sure, because the panel member, Mr. Brown, whom I have asked to preside from now on, has already evidenced the remarkable capacity to make speedy rulings upon all objections. . . . The fact that they almost uniformly amount to a sustaining of any position taken by the petitioner [the Attorney General] and a rejection of any position taken by the respondent [Communist Party] is purely coincidental, I am sure."

When LaFollette's recess appointment expired without Senate action, Brown became chairman of both the board and the panel. At the conclusion of the Communist Party case Brown resigned and was succeeded by Thomas J. Herbert, Ohio Republican appointed by President Eisenhower; Herbert is presiding over the fate of the organizations accused of being "fronts."

NO ONE was much surprised when the board, in April of this year, found the Communist Party to be a "Communist-action organization" as defined in the act and ordered it to register. Though the result was foreordained, some of the methods by which it was reached are of interest. It is instructive to remember that for some years before the McCarran Act we had laws on the books requiring the registration of any agent of a foreign principal and of any organization which aims to control by force or to overthrow the government. The present registration provisions, in so far as they are directed at the Communist Party, are inspired in part by the testimony of Attorney General, now Supreme Court Justice, Tom Clark that he had been unable to obtain evidence sufficient to prosecute Communists for failure to register under these acts. The purpose of the new act, therefore, was not to create registration requirements aimed at the Communist Party but rather (1) to transfer the fact determination from the regular courts to a specially created board, (2) to authorize this board to draw inferences of foreign control from ideological evidence, and (3) to extend the registration requirements to organizations deemed to be "Communist fronts."

In dealing with the Communist Party the difficulties of proving foreign "control" or "domination" become immediately apparent despite the fact that many persons might assume that this matter could be easily determined. The difficulties stem from the question of what is meant by control. It cannot mean actual physical control, in the sense, for example, that the Red Army could enforce Soviet decisions on the Communist Party of Czechoslovakia. The transfer of funds might be an important element, but there seems to be little evidence, if any, of the use of "Moscow gold." Inevitably, therefore, the exploration gets back to some ideological measure or standard of control. A group of people, it is argued, have agreed to believe rigidly in certain concepts promulgated by a foreign power and to urge others to accept these concepts. As part of their indoctrination, they have agreed in advance to change their views, from time to time, at the behest of the same foreign power. But merely to state this standard of proof should be sufficient to indicate its dangers. Many organizations—nationality groups, for example—steadily support the "line" of a foreign power.

Apart from this, our government has never insisted on its right to promulgate a fixed, official line of its own. Yet this is exactly what is involved in the insistence that all those who believe our policy should be changed to conform to the programs of another government are "agents" of that government. To take such a position precludes significant debate on vital issues of foreign policy. Hence the attempt to prove foreign domination by reference to an ideological standard leads back to the basic proposition that only overt acts should be punished, not beliefs, not even the agreement in advance to adhere to a particular belief, for such an agreement is, after all, still a belief.

IN APPLYING the ideological test in this first case the board found it to be quite unimportant whether the Russian or the American expression was the earlier. It also refused, on the ground of irrelevance, to permit the Communist Party to show that many of the views used as tests of non-deviation had been shared by a considerable portion of the non-Communist world. The test would thus be equally valid to show that the Soviet Union is controlled and dominated by the Communist Party of the United States if that were the desired result. It would also, if sound, go far to show that the board is controlled and dominated by the Department of Justice, since its report does not deviate by a hair's breadth from the department's contentions on all the numerous and complex issues presented for determination.

The Communist Party, of course, argued that there was nothing inherently improbable about two organizations applying the same theory to given facts and arriving independently at the same result. In answer to this the board cut many Gordian knots by deciding that the theory is itself the organ of control. Thus the board finds that Marxism-Leninism "has been promulgated and issued by the Soviet Union as the overall philosophy, authoritative rules, directives, and instructions governing the world Communist movement" and that "the [Marxist-Leninist] classics are one of the chief means by which the C. P. S. U. directs, dominates, and controls the C. P. U. S. A." The board does not hesitate, either, to plunge into obscure doctrinal disputes, deciding which of the possible interpretations is true Marxism-Leninism and then pin-

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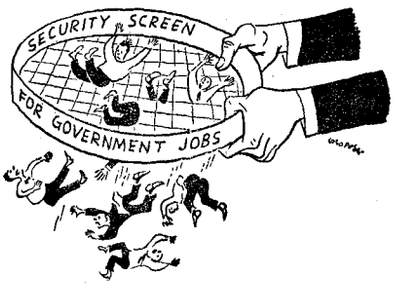
ning that interpretation on the protesting Communist Party. Thus the board remarks: "In view of the divergence of testimony of witnesses for Petitioner and those of Respondent concerning the meaning and application of this tenet [dictatorship of the proletariat], we have taken particular pains to ascertain its real character. It is best understood from the volume . . . Lenin's postulates on this question make clear. . . ." And again: "Adherence to Marxism-Leninism, as its principles and precepts are stated in the Classics, is completely incompatible with Respondent's contention. . . ."

THE BOARD'S permanent function, however, for which the Communist case is merely a legal opening gambit, is the control of the principle of voluntary association.

This is indeed an awesome power. Tocqueville, more than a century ago, found this principle to be a basic characteristic of American institutions. "Americans of all ages, all conditions, and all dispositions," he said, "constantly form associations. They have not only commercial and manufacturing companies in which all take part, but associations of a thousand other kinds, religious, moral, serious, futile, extensive or restricted, enormous or diminutive. If it be proposed to advance some truth or to foster some feeling by the encouragement of a great example, they form a society." It may be seriously contended that these associations have played an even greater part in making change possible by democratic methods than the amorphous political parties, which have often tried to be all things to all men and have seldom been willing to embrace any new idea until it had first been thoroughly popularized by associations. Certainly a new idea will have little impact on a society subjected to radio, television, movies, and the daily press unless it has some organized backing. Consequently, the traditional freedoms of which we are more acutely conscious, those of speech, press, and religion, are of little practical value without freedom of association.

It is thus an event of no slight importance that we now have a board of five persons empowered to sit in judgment on any organization and to issue orders capable of destroying it. Since organizations will be judged in large part by the causes they promote, this is also a power over the fate of the causes themselves.

The twelve petitions already filed by the Attorney General give some hint as to the type of accusation the board will be called upon to try. Space does not permit a detailed analysis of the petitions, but an examination of five



of them—those against the National Council of American-Soviet Friendship, the Civil Rights Congress, the Veterans of the Abraham Lincoln Brigade, the Joint Anti-Fascist Refugee Committee, and the American Committee for Protection of the Foreign-Born—reveals the following significant facts:

Each of the organizations is accused of having persons in its leadership who are also Communists. It is not stated who these persons are, what positions they hold, whether they were democratically elected, whether they are known as Communists to the other members. It is not alleged—and the Attorney General, therefore, presumably considers it unnecessary to prove—that these persons used the organization for any unlawful or immoral purpose, for any purpose inconsistent with the maintenance of democratic capitalism, for any purpose outside the scope of the organization's professed objectives, or even for any purpose not known to and approved by the membership.

Each is accused of having "received favorable publicity and support through the Communist Party press."

Each is accused of "non-deviation" from the Communist Party line on the basis of taking positions which might be approved by a substantial number of non-Communists, such as "urging the recognition of and trade with the Chinese People's Republic."

Several of the organizations are accused of "non-deviation" for taking positions which seem implicit in the organization's professed purposes. For example, the Civil Rights Congress is accused, among other things, of having defended Communist leaders prosecuted under the Smith Act, of having "supported the position of the Communist Party with respect to the 'Hollywood ten,'" and of having "supported the position of the Communist Party in its protest against the trial and conviction of Harry Bridges." It is not mentioned, of course, that the conviction of Harry Bridges was reversed by the non-deviationist majority of the Supreme Court. Both the Veterans of the Abraham Lincoln Brigade and the Joint Anti-Fascist Refugee Committee are alleged to have "supported and followed the position and actions of the Communist Party in its opposition to and campaign against the Franco government of Spain." The American Committee for the Protection of the Foreign Born showed non-deviation by "opposing the deportation of aliens who were members of the party," although there is no allegation that the committee failed to give similar aid to aliens who were not members, which they have done in many cases. Apparently it is characteristic of organizations which are not "Communist fronts" that they will jettison the very purposes for which they were founded rather than do something which Communists might applaud.

Three of the organizations are charged with opposition to the Internal Security Act of 1950, under which they are currently on trial, and three with opposing its predecessor, the Mundt-Nixon bill. Three showed Communist domination by disliking the Hobbs bill, the Smith Act, or the government loyalty program. Four are charged with opposing the House Committee on Un-American Activities, which puts them in a class with many religious groups.

HOW FAR will such reasoning be carried? Justice Holmes long ago noted the tendency of any principle to expand to the limits of its logic. Any estimate of the potentialities of this logic must take account of the fact that, as has happened with individuals in the government loyalty program, an organization may suffer virtual ruin just for having been cited before the board, even if it ultimately wins its case. It must also take into account the invisible pressure on organizations which may

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never be cited but will hesitate to take any stand which might involve the slightest risk. The threat, even if unspoken, to complain to the Attorney General may give right-wing minorities in many organizations a virtual power of veto over the majority's program.

Power to tame and control voluntary associations necessarily includes power to tame and control unions—the act says "any organizations." Indeed, for many reasons—Communist enthusiasm for labor militancy, a corresponding lack of enthusiasm in reactionary groups, the ease with which strike action can be decried as tending to aid the enemy in the cold war—unions are especially susceptible to this type of attack. Although the Subversive Activities Control Board could probably order a union to register as a "Communist front" under the present act, bills to give it even more drastic and lethal powers over unions are waiting in the Congressional hopper. (See my discussion of the Butler bill in *The Nation* of November 28.)

That the expansive possibilities of the principle were not entirely unintended was suggested by Representative Allen of Illinois speaking in the House in defense of the original Mundt-Nixon bill, which differed from the present provision in that the determination of facts would have been made by the Attorney General rather than by a special board:

> Another criticism offered to the bill is that it vests in the Attorney General the arbitrary power to prosecute, try, and judge persons violating the provisions of the bill. When I heard this objection to the bill, I was not only surprised but also mildly amused. Here are the people who have long advocated the persecution and harassment of business men through administrative processes. Here are the people who wanted to continue forever the control measures under which government bureaus would prosecute, try, convict, and punish business men. These people who wanted to see the free-enterprise system crushed and our nation's business men bankrupted through a systematic persecution under the New Deal—these people say this bill puts too much power of discretion in the Attorney General. To this objection I would say that the New Dealers who built the present administrative guillotine for business men should have remembered the fate that befell Dr. Guillotine. He learned that a knife cuts both ways—and now the New Dealers are being taught the same lesson.

Attorney General Brownell has sole power to determine what organizations shall be charged before the board. The length to which he may be expected to push Mr. Dies's formula is shown not only by the charges incorporated in his first "front" petitions but also by his recent announcement of intention to put the National Lawyers Guild on his own "subversive" list. With control of the American Bar Association in very conservative hands, the Lawyers Guild is virtually the only vehicle through which the views of liberal lawyers can be given organized expression. Mr. Brownell says that "on every major issue" in recent years the guild "has steadfastly followed the party line, and its programs and actions have been consistent with it, excepting only those issues so notorious that their espousal would too clearly demonstrate the Communist control." Mr. Brownell seems to have learned from Senator McCarthy that the accuser can rely on deviation and non-deviation simultaneously, the latter to show Communist control and the former to show efforts to conceal Communist control. Or, as a last resort, instances of deviation may be shrugged off as not involving a "major issue." The Lawyers Guild's membership and activities have always been open to the public, and it is not accused of promoting its ideas otherwise than by the methods of a bar association—public debate and participation in litigation. Mr. Brownell, essentially, is attacking the idea of a free and independent bar.

There seems to be nothing in the Attorney General's record or the board's to suggest that the principle will not be expanded to the limits of its logic unless the courts or public opinion call a halt. (In what seems likely to be the key test of the act, the guild has brought suit to enjoin the hearing of the petition). If each accused organization is left to fight its solitary battle, effective resistance will become increasingly difficult. The board will be progressively strengthened by the accumulation of precedent, and the opposition will be progressively weakened by the spreading paralysis of fear. It is of the nature of this type of attack that it tends to isolate each current victim by making people afraid they may incur some associative guilt if they come to his defense.

Still, it ought not to be necessary for Americans to relearn the hard way the lesson that liberty is indivisible.

Archangel of Darkness

MARK F. ETHRIDGE

What are the forces which threaten to make us destroy the foundations and abandon the postulates of our own faith? I agree with George Kennan, who in his brilliant Notre Dame speech said that they are "too diffuse to be described by their association with any one man or any one political concept"; that they are yet largely matters of mind and of the emotions, all marching, "in one way or another, under the banner of an alarmed and exercised anti-communism—but an anti-communism of a quite special variety, bearing an air of excited discovery and proprietorship, as though no one had ever known before that there was a Communist danger."

There are those who call it, superficially, I think, McCarthyism. That is flattering the evil genius of the Senator from Wisconsin too much; he is only an archangel of darkness, not the devil himself. Our illness goes deeper than any one man. It is a malady of the soul that summons all the evil forces of the Inquisition, of the Cheka, of Hitlerism, of Stalinism, of the Ku Klux Klan, and all those nauseous forces which claim dominion over the conduct and the souls of other men. The danger is that in our hysteria to achieve what we regard as security, we tear out the real roots of security—man's confidence in himself and in other men. In our hunt for subversives, defined by those who have arrogated to themselves the right to judge what is subversive and what is 100 per cent American, we create real subversives—those who would whittle away ancient and hard-won liberties; and we set in motion forces so dangerous that frequently they can be stopped only after they have left deep scars upon all of us, or as the French discovered in their revolution, only after a nation is sated with blood-letting and vengeance.

[*Mark F. Ethridge is publisher of the* Courier-Journal *and Louisville* Times, *Louisville, Kentucky.*]

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III. THE STAR CHAMBER

THE American tradition is not as new as 1776, nor is it so ancient and derivative that we can take little pride in it. Those who speak today with condescension and scorn of "Fifth Amendment people" are victims of the delusion that the present is not part of history.

Harold W. Wolfram reminds us that John Lilburne, leader of the Levelers, is as much a part of the American tradition as Patrick Henry. Nowadays, when history cannot be conveniently ignored, the fashion is to rewrite it—witness the notion that the American contribution to the growth of human freedom has been neither novel nor meaningful. The victims of this delusion should be urged to read today's headlines in the light of Alexander Meiklejohn's brilliant interpretation of the meaning and spirit of the First Amendment.

Freedom and the People

by Alexander Meiklejohn

WHAT limits does the Constitution of the United States set to the authority, the jurisdiction, of Congress? The reflections which I here offer are drawn chiefly from a dissatisfied reading of a concurring opinion in the Dennis case, written by my life-long friend, Justice Felix Frankfurter.

The question before us rests on the assumption that the three subordinate branches of our government have only limited powers. What, then, are the restrictions which we, the Sovereign People of the United States, speaking through our Constitution, have placed upon the federal law-making body? And, more specifically, in these days of bitter and dreadful crisis, is Congress authorized to destroy, or even to abridge, the political freedom of the people whom it serves?

That question, it would seem, is definitely answered in the negative by the First Amendment. Its political clauses declare in well-known words that "Congress shall make no law . . . abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition the government for redress of grievances."

Now these words, it should be noted, are radically different in reference from other provisions of the Bill of Rights. Those other provisions do not deny powers to Congress, do not limit its jurisdiction. On the contrary, they require only that powers clearly delegated shall be used reasonably and with proper procedure. For example, our private property may, by law, be taken for public use; our persons, houses, papers, and effects are subject to searches and seizures; we may be punished on conviction of crime; our life, liberty, or property may be taken from us. At these and other specific points Congress has authority, in the interest of the general welfare, to do with us and our possessions what it deems necessary and wise. And, at these points, it is required only that action shall be just, shall be administered reasonably, shall not violate what we call "due process of law," shall not inflict cruel and unusual punishments, etc.

But the First Amendment has a meaning and intention widely different from this. It denies certain powers to Congress. It specifies a field of action into which the legislature is forbidden to enter. It does not say to the lawmakers, "You must be reasonable in your destruction of the freedom of political advocacy." What it says is that neither unreasonably nor reasonably may they enact laws which abridge that freedom. In a word, the political freedom of the people of the United States is not subject to Congressional control.

What I have just said tries to express what, on its face, the First Amendment seems to say. But current majority decisions of the Supreme Court, justifying, as they do, legislative suppression of political freedom, have declared, over and over again that that is not what the amendment does say. Congress, that majority insists, has authority to abridge the freedom of the sovereign people. That is the thesis defended by Justice Frankfurter in his Dennis opinion. To challenge it and, if possible, to refute it is the purpose of this paper.

THE ARGUMENT by which, in general, the court majority justifies its contention rests upon a supposed conflict between the national interest in political freedom and the equally insistent demand for national self-preservation, for the safety and security of the people and their government. These two interests, it is argued, are both legitimate. But the problem at issue arises from the supposed fact that they may, and at times do, come into conflict. Decision must therefore be made between them. By whom, then, shall the decision be made? And to this crucial question the court majority has answered. "By the legislature." Whenever, then, in the judgment of Congress conflicting interests of security outweigh the values of political freedom, our independence may, by legislative action, be denied or abridged.

That judicial verdict may be challenged, I think, in two ways. First, in a self-governing society it is never true that the security of a nation is actually endangered by the freedom of the people. Whatever may be the immediate gains and losses in this situation or that, the dangers to our security arising from political suppression are always, in my opinion, greater than the dangers

ALEXANDER MEIKLEJOHN, formerly president of Amherst College, is the author of "Free Speech and Its Relation to Self-Government" and "What Does America Mean?"

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to that security arising from the practice of political freedom. In the long run, repression is always foolish. Freedom is always wise. That is the faith, the experimental faith, by which we Americans have undertaken to live.

For the present argument, however, let us waive this first point. Let us suppose that the enslavement of our minds may promote our safety. Is Congress authorized, then, to practice it? In many diverse forms, the court has asserted that doctrine. One of these, quoted by Justice Frankfurter, reads as follows:

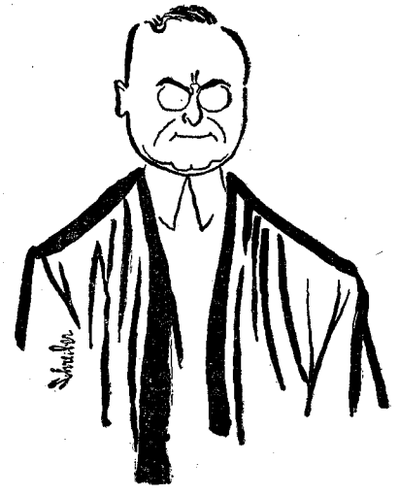
> To preserve its independence, and give security against foreign aggression and encroachment, is the highest duty of every nation, and to attain those ends nearly all other considerations are to be subordinated. It matters not in what form such aggression comes. . . . The government, possessing the powers which are to be exercised for protection and security, is clothed with authority to determine the occasion on which the powers shall be brought forth.

That statement says that the government of the United States has authority to destroy freedom. And, since it is a sovereign government, the statement is obviously true. The First Amendment, which might seem to stand in the way of such action, exists only by the will of the government. Its authority is only political. It may, therefore, be swept aside, be annulled or superseded in whatever way, for whatever reason, the government may find sufficient. But what bearing has that statement on the powers of Congress?

CONGRESS is not the government. It is only one of the four branches—the electoral, the legislative, the executive, the judicial—of which the government consists. The fact, then, that the government has a specific power gives no evidence that Congress has that power. Under the Constitution the original powers of the sovereign people are "reserved" as well as "delegated." And, further, the power to suppress political freedom is specifically "reserved."

In a word, the question at issue is not: Has the government authority to destroy our freedom? Of course it has. But our very different question is: Has Congress that authority? And the assertion that it has finds no support whatever in the principle on which the court majority rests its case.

But the error thus far considered is, I think, merely a superficial form of a deeper judicial error which is sapping the foundations of our freedom. This deeper judicial error is at work in that



Justice Frankfurter

Dennis opinion of Justice Frankfurter to which I have already referred. He there quotes as authoritative the majority *Robertson* v. *Baldwin* decision, rendered in 1897, which says:

> The law is perfectly well settled that the first ten amendments to the Constitution, commonly known as the Bill of Rights, were not intended to lay down any novel principles of government but simply to embody certain guaranties and immunities which we had inherited from our English ancestors, and which had from time immemorial been subject to certain well-recognized exceptions arising from the necessities of the case. In incorporating these principles into the fundamental law there was no intent of disregarding the exceptions which continued to be recognized as if they had been formally expressed.

In comment on this, Justice Frankfurter adds:

> That this represents the authentic view of the Bill of Rights and the spirit in which it must be construed has been recognized again and again in cases that have come here within the last fifty years.

Is it true that our Bill of Rights "laid down no novel principles of government"? Are we to believe that the American Revolution had no revolutionary *political* significance? Was the dictum, "Congress shall make no law respecting an establishment of religion," etc., inherited from our *English* ancestors"? With respect to certain items in the Bill of Rights, the denial of novelty is, of course, valid. Such rights as habeas corpus, due process, fair trial, security from unreasonable searches and seizures, and so on had long been fought for and, in some measure, won in Britain and the colonies.

It could fairly be said of them that no "novel principles" had been laid down. But to say that the relation between the people and the legislature was now, in principle, as it had been before is to miss the meaning not only of the First Amendment but of the Constitution as a whole. Before we accept a doctrine so monstrous in its destruction of our freedom let us proceed to examine two sets of opinions held by men of high repute in political theory which sharply reject this "authentic" doctrine. The first is taken from the writings of James Madison and Alexander Hamilton in the *Federalist*. The second is found in a dissent by Justice Harlan attacking the decision in which the "authentic view" was formulated.

FIRST, THEN, let us listen to Madison and Hamilton in the *Federalist*. Throughout their arguments runs a subtle and powerful insistence on the need of limiting legislative power. And the unfailing purpose of their inquiry is to find ways of guarding the political freedom of the people from invasion by the lawmakers. It is, of course, recognized that Congress has authority to enact laws which the people must obey. In this legal sense, the people are dependent on, are subject to, the legislature. But with respect to political authority, that relation is reversed. If men are to be self-governing, as the Constitution intends, they must exercise an effective control over those legislators who make the laws which they are called upon to obey. Politically, they must govern those who, legally, govern them. This double relationship Hamilton brilliantly describes in the words:

> It is one thing to be subject to the laws, and another to be dependent on the legislative body. The first comports with, the last violates, the fundamental principles of good government and, whatever may be the form of the Constitution, unites all power in the same hands.

With hard, incisive logic Hamilton demonstrates the necessity that the legislature be kept subject to the will of a free people. It is chiefly the legislature,

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he tells us, which threatens to usurp the authority of the people. And again, he says, "it is against the enterprising ambition of this department that the people ought to indulge all their jealousy and exhaust all their precautions." And the Constitution, he assures us, has carefully taken those precautions. By direct vote, the people will elect their representatives. Elections will be for terms brief enough to insure active and continuous popular control. Representatives will have no powers other than those specifically delegated to them. A general legislative power would contravene the basic principles of the system. Politically, the lawmakers are, and must be, the servants of the people.

HAMILTON'S argument to this effect reaches its culmination when, in Number 84, he deals with the accusation that the new Constitution, as drafted by the convention, does not provide a Bill of Rights. The plan, he declares, does not need a Bill of Rights. It does far more to protect the freedom of the people from legislative usurpation than could possibly be done by appending a Bill of Rights to a constitution which, having neglected those rights, would have need of such an appendage. The defenses of our freedom, he declares, are imbedded in the very structure of the Constitution itself. Whoever attacks freedom is attacking, not an addendum to the Constitution, but the living spirit of the whole.

Over and over again he reiterates that assertion. I can give here only one of his statements:

> The truth is, after all the declamations we have heard, that the Constitution is itself, in every rational sense, and to every useful purpose, a Bill of Rights. . . . Is it one purpose of a bill of rights to declare and specify the political privileges of the citizens in the structure and administration of the government? This is done in the most ample and precise manner in the plan of the convention, comprehending various precautions for the public security, which are not to be found in any of the state constitutions. Is it another object of a bill of rights to define certain immunities and modes of proceeding which are relative to personal and private concerns? This we have seen has also been attended to, in a variety of cases, in the same plan. Adverting, therefore, to the substantial meaning of a bill of rights it is absurd to allege that it is not to be found in the work of the convention.

If Hamilton is right, as I think he is, the assertion that the American Constitution established no "novel principles of government" is a patent and disastrous absurdity, an absurdity in which our current suppressions of political freedom find their source. Over and over again Madison and Hamilton proclaim the faith which that heresy denies. In Number 14, Madison writes:

> Had no important step been taken by the leaders of the Revolution for which a precedent could not be discovered, no government established of which an exact model did not present itself, the people of the United States might, at this moment, have been numbered among the melancholy victims of misguided councils, must at best have been laboring under the weight of those forms which have crushed the liberties of the rest of mankind. Happily for America, happily, we trust, for the whole human race, they pursued a new and more noble course. They accomplished a revolution which has no parallel in the annals of human society. They reared the fabrics of government which has no model on the face of the globe.

THE SAME unequivocal rejection of the "authentic view" of the contemporary court is strongly urged by Justice Harlan in his dissent from the decision from which that view is now quoted. He discards as wholly invalid the inference that because the British Parliament could make exceptions to a principle, the Congress of the United States could do the same.

> Nor, I submit [he says], is any light thrown upon the present question by the history of legislation in Great Britain. The powers of the British Parliament furnish no test for the powers that may be exercised by the Congress of the United States.

In support of that opinion he calls upon James Bryce, who in his "American Commonwealth" tells how fundamentally the principles of the Constitution have departed from the principles of the British system. Parliament, according to Bryce, had unlimited power. It could, he says, "abolish when it pleases every institution in the country, the Crown, the House of Lords, the Established Church, the House of Commons, Parliament itself."

By contrast with this original and unlimited authority of the British legislature, Justice Harlan insists that the powers of the American Congress are derivative and subordinate, as well as limited and specific. The distinctive feature of our Constitution is that it is established, not by the legislature, but by the people.

> No such powers [he says] have been given to or can be exercised by any legislative body under the American system. . . . The authority for the exercise of power by the Congress must be found in the Constitution. Whatever it does in excess of the powers granted to it, or in violation of the supreme law of the land, is a nullity, and may be so treated by any person.

He therefore deplores a decision in which "the clear reading of a constitutional provision relating to the liberty of man is departed from in deference to what is called usage which has existed, for the most part, in monarchical and despotic governments."

Here, then, is the principle on which we may take our stand with Madison and Hamilton and Harlan. In so far as we are true to the Constitution we Americans are not living under "monarchical or despotic governments." Our legislature has no authority to exercise control over our political freedom.

The intent of the Constitution is that, politically, we shall be governed by no one but ourselves.

We are not, then, a subject people

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begging or fighting for such limited privileges and powers as may be grudgingly granted to us by a sovereign legislature. We are the sovereign, and the legislature is our agent. And when we play our sovereign role in what Hamilton calls "the structure and administration of the government" that agent has no authority whatever to interfere with the freedom of our governing. As we go about that work neither Congress nor any committee of Congress may use force upon us to drive us toward this public policy or that or away from this public policy or that. A legislative committee which asks the question, "Are you a Republican?" or "Are you a Communist?" accompanying the question with the threat of harm or disrepute if the answer is this rather than that, stands in contempt of the sovereign people to whom it owes submission. In the words of Justice Harlan, such action "is a nullity, and may be so treated by any person."

We Americans, acting as free citizens, may make mistakes; we may be selfish or stupid or negligent. But in the field of political opinion or expression or affiliation, we cannot commit punishable crime for the reason that, in that field, the lawmakers have no authority to legislate a crime into existence.

At this final point my lawyer friends will, I know, say to me, "Don't you know the law is what the Supreme Court says it is?" And to that I answer in closing, "Yes, I know that the law today is what today the court says it is. But you see, I am hoping that tomorrow the members of the court will read again from Madison and Hamilton and Harlan. Perhaps tomorrow they will change their minds."

But today I would say to them that the Supreme Court, more than any other agency or person in our society, must be held responsible for the destruction of those constitutional principles which that court is commissioned to interpret and to defend.

The Tradition of Dissent

by Harold W. Wolfram

WHEN Milton resolved to take sides in the violent political and religious controversies of his time, he was painfully aware of the fact, which he duly recorded, that his decision meant forsaking the "calm and pleasing solitariness of the poet" and embarking upon a "troubled sea of noises and hoarse disputes." Despotism's fate was decided when a handful of his less renowned compatriots made a similar choice.

The hoarse disputes of the middle 1600's originated in an effort of the Calvinists to reform the Anglican church by "purifying" it of its Roman Catholic heritage; this developed into a full-scale conflict as a result of the repressive measures of Charles I and Archbishop Laud. In the meantime opposition had spread to the political arena, where the rising class of property-owners, the men of commerce and industry, gathered in Parliament to challenge the power of the throne. The unpleasant noises were provided by the "purifiers," or Puritans, an extraordinary coalition of rebels, with somewhat ambiguous aims, united only in their opposition to the king and to his church. The uneasy alliance consisted of those who sought merely to substitute presbyters for bishops in a state ruled by the church, Cromwell's Independents, who opposed both presbyters and bishops while also objecting to any real diffusion of political power, and finally the "hundred sects and thousand doctrines" which, according to Trevelyan, "opened England's strange path to intellectual liberty."

Most of the religious sects on the fringes of the Puritan movement advocated doctrines which were unfamiliar then and which would seem equally strange today. However, the novelties put forward by a political party referred to derisively as the "Levelers" marked the "first great outburst of democratic thought in history" and constituted, by their ultimate adoption here, a most important contribution to the American tradition.

John Lilburne, the leader of the Levelers, was one of the noisiest and most inflexible of men in this vast sea of agitation. The fearlessness of the fighter struggling on the frontier of ideas characterized his entire life. He sought to achieve for "the poorest he that is in England" a measure of religious liberty and political power unheard of in his day, together with a just and equitable criminal procedure under which differences and disputes might flourish. In the main he failed, but his struggle helped to popularize the innovations of the seventeenth century and to transform them into the American tradition. His story provides a much needed reminder to subsequent generations, concerned with their liberty, that the rights and privileges we enjoy originated not in constitutions, written or unwritten, but in grim experience and that under our form of government only the knowledge and spirit of the people can guarantee that we shall preserve these painfully won gains.

When an Englishman ran afoul of his government in the seventeenth century, his future became fairly predictable. Accusation was tantamount to conviction, and conviction meant confinement in foul jails or death. No one had the right to speak his opinion or to publish it. Anyone accused of uttering an opinion thought to be inimical to church or state was compelled to defend himself without procedural safeguards which would be considered basic today. The accused was committed to jail and kept in close confinement until the day of his trial. He was given no information about the charge and had no means of finding out what evidence had been given against

HAROLD W. WOLFRAM is associated with Lloyd Paul Stryker in the practice of law in New York.

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him. He was not entitled to bail and could not secure his release by habeas corpus. He was not furnished with a copy of the indictment and knew nothing of its contents until it was read at the very commencement of his ordeal. Except when tried for minor offenses, he had no lawyer to advise him, to interrogate his witnesses, to cross-examine the prosecution's witnesses, or to sum up to the jury. He had no right to subpoena witnesses, and those who appeared voluntarily in his behalf could not be sworn as were the witnesses for the prosecution. He could not take the stand in his own behalf, being considered incompetent as a witness, but was subject to the bullying and browbeating of court and prosecutor as he attempted to defend himself in colloquies with government witnesses. He was constantly exhorted to tell "the truth." The judges, holding office at the pleasure of the appointing power, were completely subservient to the government. Jury panels usually consisted of those who could be trusted to understand the enormity of the prisoner's offense. Finally, if the accused succeeded, as very few did, in establishing his innocence in the face of these insuperable obstacles, any jury which might be tempted to acquit was subject to amercement if the court decided that the verdict was contrary to the "evidence."

IT TOOK an extraordinary man to advocate anything offensive to the government under these circumstances. It was indeed an extraordinary man who stood by his principles in defiance of the power and wrath of three despotic governments —those of Charles I, the Long Parliament, and Cromwell.

Lilburne's encounter with King Charles's Court of Star Chamber resulted from the discovery of some pamphlets, smuggled into England from Holland, attacking the bishops of the Anglican church. He was formally accused of complicity in the crime and did not hesitate to deny it, but when he was questioned about the conduct of others he refused to answer, claiming the privilege, which the court would not recognize, of refusing to answer concerning matters not embraced within the formal charge. For declining to take the oath which would have required him to answer these questions he was sentenced for contempt, the punishment consisting of five hundred lashes, confinement to the pillory, and then to jail until he "conformed himself" to the orders of the court. He probably would have died in jail rather than conform himself to the orders of the court, but

his detention was interrupted three years later when Charles I was compelled, by the war with the Scots, to convene the Long Parliament in order to raise money.

The House of Commons, dominated by the Puritans, whose fierce conviction of righteousness precluded all thought of compromise, freed Lilburne and set aside the order of Star Chamber as "bloody, cruel, wicked, barbarous, and tyrannical." Then followed the abolition of Star Chamber itself along with the oath applied in the ecclesiastical courts which had given such offense to the dissenters. The long years of Puritan opposition to self-incrimination with respect to questions prompted by mere suspicion and not related to a formal accusation, climaxed by Lilburne's spectacular defiance of Star Chamber, popularized the privilege and assured its ultimate extension to all the courts of England in the form in which we know it today—namely, that no one shall be compelled to be a witness against himself whether formally accused or merely suspected of crime.

Lilburne, free, proved to be no less troublesome to the Long Parliament than he had been to the king. For three years England enjoyed unlicensed and unregulated printing. Then, with the outbreak of the Civil War between king and Parliament, the latter reimposed a strict censorship of the press. Lilburne promptly attacked the Presbyterians who now controlled the legislature. "You and the Black Coats in the Synod," he wrote, "have not dealt fairly with your antagonists in stopping the press against us, while things are in debate, yea robbing us of our liberty . . . in time of freedom." For his strictures upon the government he was hauled, three times, before the Committee of Examinations of the House of Commons. There he refused to answer questions until the cause of his detention was specified, and claimed the right to an open hearing as well as to the protection of the privilege against self-incrimination on the theory that a legislative committee, when "it sits upon criminal causes betwixt man and man concerning life, liberty, estate," must observe the methods and rules of "other courts of justice." He was thrown into jail once again, this time by the apostles of liberty. Then, as the unity of the Puritans dissolved, Lilburne's position became even more precarious.

The rank and file of Cromwell's New Model Army, which had defeated the king's Cavaliers, belonged to the troublesome and noisy sects with whom Parliament could find no common ground after the successful campaign. The Presbyterians first refused to raise the money required to pay the arrears due the soldiers and then joined their erstwhile enemy, Charles I, to obtain an invading army to support the government. When the plot was exposed, Cromwell joined his comrades-in-arms, fought the second Civil War against the king to a successful conclusion, and followed his victory with Pride's Purge, which removed the Presbyterian majority from Parliament. This left the "Rump," which convoked a special tribunal to dispose of the king.

LILBURNE spurned an opportunity to join forces with Cromwell. He thought that the king should be tried by a jury and not by a packed court. He thought that the army deserved better treatment at the hands of Parliament. He thought that the Rump was not a Parliament and that it was usurping a power which belonged to the people. He insisted that the powers of government be strictly defined by a written constitution. He proclaimed his beliefs as noisily and as often as he could. He inquired bitterly: "I would fain know in law, where Col. Tho. Pride was authorized to chuse the People of England a Parliament; or to

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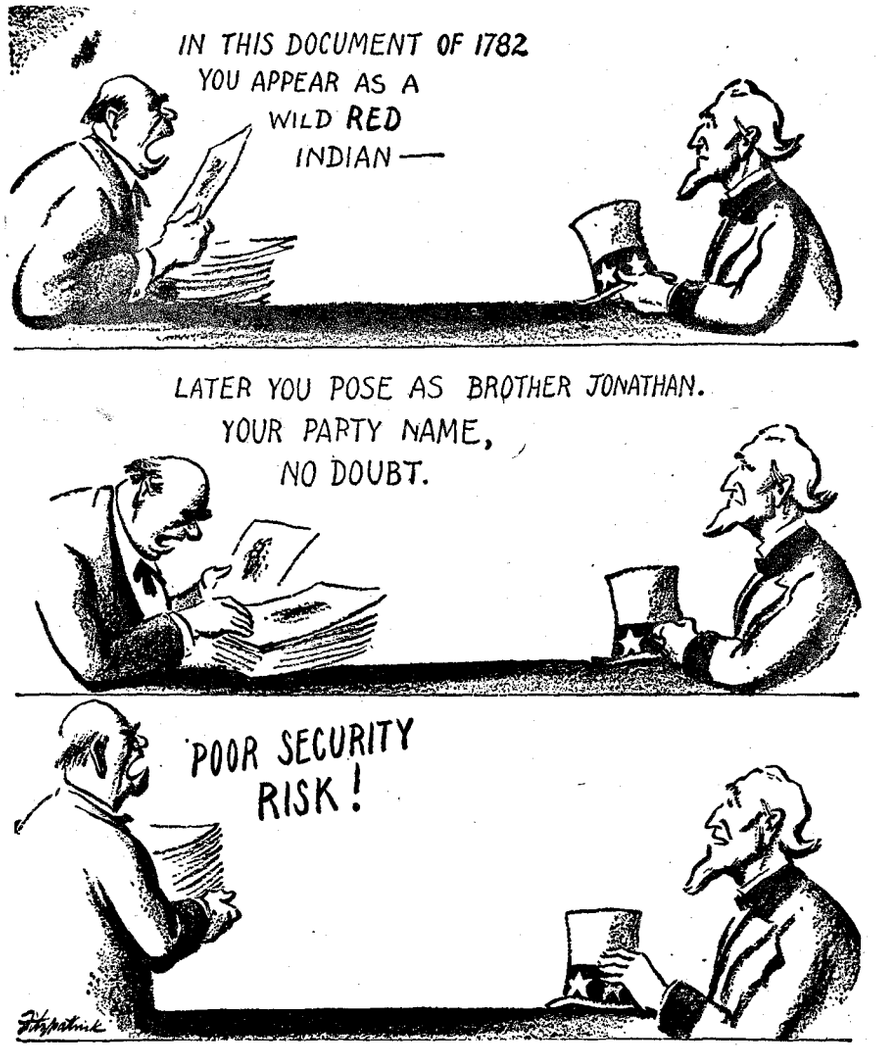
purge away at his pleasure by his sword three-quarters of four of the House of Commons." His unique position, at this time, has been described as follows: "In a revolution where others argued the respective rights of kings and parliament, he always spoke of the rights of the people." His democratic ideas were hardly calculated to allay the seething discontent which pervaded the army, the mounting fury of the sects, or Cromwell's fear of widespread disaffection. Furthermore, the king's execution did not sit too well with the English people. Cromwell decided to secure himself by disposing of another adversary. He began to plan, with utmost deliberation, the downfall of John Lilburne.

Twelve of the leading judges of the realm were called to London to confer, in secret, with the Attorney General. Their purpose became clear when, two months after the death of the king, several hundred armed men, on horse and on foot, surrounded Lilburne's home in the suburbs and at four o'clock in the morning dragged him from his bed and rushed him off to jail. He was kept in close confinement for five months and denied the sight of his wife and children for the greater part of that period, although no formal charge had been laid against him. He was finally indicted for treason, having violated, it was claimed, a statute enacted after he was taken into custody by publishing, while in jail, a series of intemperate attacks on Cromwell and the Rump.

When the court informed the prisoner that twelve judges would preside at his trial because he would have outtalked fewer, he responded: "Truly, sir, I am not daunted at the multitude of my judges, neither at the glittering of your scarlet robes, nor the majesty of your presence and harsh austere deportment towards me. I bless my God for it, who gives me courage and boldness." Courage and boldness he had indeed. The understanding of the jury was what he sought.



Courtesy St. Louis *Post-Dispatch*

In the United States of McCarthy

LILBURNE had no knowledge of the charge against him until the accusation was read at the opening of the trial. When he demanded a copy of the indictment, counsel to represent him, time to prepare and subpoenas for witnesses, the prosecutor answered: "It is true Mr. Lilburne hath pleaded his own ignorance and therefore desires longer time. But, my Lord, to make a precedent of this nature, that never was known by the laws of England, is very dangerous, very perilous." All the requests of the accused were denied, but the judges finally adjourned until seven o'clock the next morning as an "extraordinary favor" in order that "all the world shall know with what candor and justice the court do proceed against you."

The fact that he was denied counsel and witnesses was actually no handicap to a man of Lilburne's talents. No lawyer would have dared request the novelties in procedure which the prisoner did not hesitate to demand. No witness called by the defendant could have altered the black picture presented by the government of a violent attack upon Cromwell and Parliament. Yet when he was rebuffed, as he knew he would be, he could turn to the jury and complain that if the court "shall deny . . . these legal privileges, I shall desire my jury to take notice, that I aver you rob me of the benefit of the law," and further that he had "many material things to produce witnesses unto for my justification; but no time in the least will be allowed me, as you see, to produce them, which I ought by law to have had; especially considering that I have been locked up so long close prisoner, and have nothing for which I was first imprisoned laid until my charge, and have such high, potent, and mighty adversaries."

Then, to the consternation of the judges, who sought to interrupt him to no avail, Lilburne informed the jury that they could disregard the court's instruction to decide merely whether he had or had not published the pamphlets in question. He told them that they, and not the court, had the power to determine whether the writings were treasonable, which is sound legal theory today but was a grave heresy when he expounded it. He turned to the bench and

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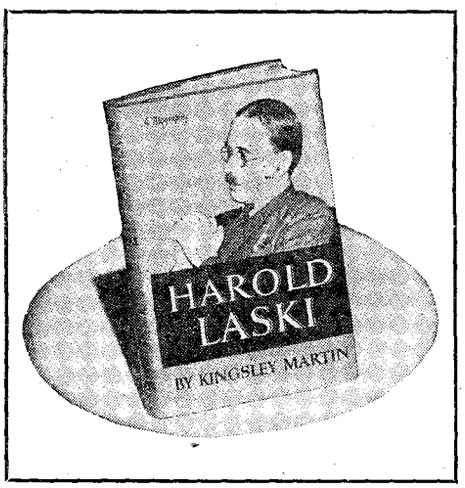

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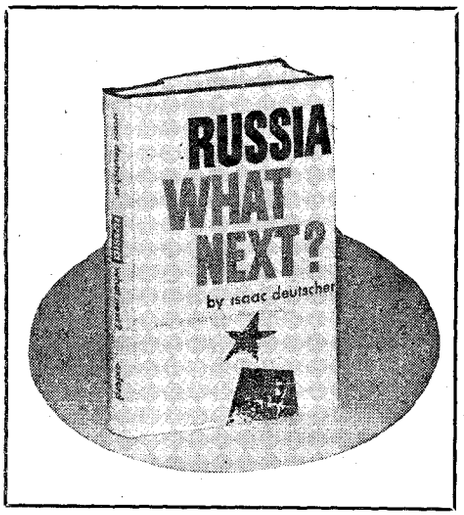

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declared: "You judges that sit there are no more, if they [the jury] please, but ciphers to pronounce the sentence, or their clerks to say Amen to them."

Lilburne's acquittal was greeted with acclamations the like of which "hath not been seen in England." The result was a grave blow to Cromwell, "who looked upon it as a greater defeat than the loss of a battle would have been."

A year of relative tranquillity followed, and then Lilburne was deep in trouble again. He addressed a petition to Parliament complaining that one of its members had seized some property by force and violence from a relative. Parliament responded with an extraordinary judgment banishing the troublesome Mr. Lilburne from England and providing that his return would be a felony punishable by death. Lilburne left quietly for Holland but, on learning that Cromwell had finally expelled the Rump, returned after first requesting, but being refused, permission to do so.

He was apprehended, indicted, and turned over to the sessions in Old Bailey for trial. Upon his arraignment he demanded a copy of the indictment. After many days of bitter wrangling he "performed the feat which no one else ever achieved, of extorting from the court a copy of his indictment in order that he might put it before counsel and be instructed as to the objections which he might take against it."

After a trial which was "even more stormy than the earlier one," during which Lilburne maintained that either the Rump was an illegal body and therefore its mandate of banishment was null and void or else Cromwell ought to be punished for unjustly dissolving it, and also that the present jury, as judges of both the law and the facts, were not required to give effect to an act of Parliament unless they approved of it, he was once again acquitted by a jury of his fellow-Englishmen. This time, however, he did not go free, for Cromwell was in the midst of a dangerous experiment. He had discharged Parliament and had assumed the title of Lord Protector. Lilburne was confined to jail "for the peace of the nation" until shortly before his death.

One of Lilburne's adversaries reproached him for his behavior in court in these sardonic words: "Thus to you, justice can never be administered till the world be new molded, nay nor yet so, except you have the new molding of it."

LILBURNE'S PROGRAM for a new world, rejected by his contemporaries, was the blueprint of the future. Out of the "troubled sea of noises and hoarse disputes" that was England emerged the supremacy of Parliament, a broad popular franchise, civil liberty, and religious toleration. In 1791 the American colonists wrote into their Bill of Rights the novelties of the seventeenth century—not only the right to the free exercise of religion, freedom of speech, and of the press, but also the privilege against self-incrimination, the provision that no one shall be "deprived of life, liberty, or property without due process of law," and the requirement that in all criminal prosecutions "the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . . and to be informed of the nature and cause of the accusation; . . . to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

The history of liberty is written in the development of procedural safeguards without which freedom of conscience and opinion could not exist. The crucial issue is whether we can meet the turbulent challenge of our age without undermining rights which were the very basis for our existence as a nation. In the face of the great temptation of the moment to sacrifice what may appear to be matters of small consequence in order to strengthen our national security, we must remember at what great cost even the least of our liberties was achieved. Our heritage of dissent and the procedure in criminal cases which secures it still distinguish only a very small corner of this troubled world.

The Tactic Is Fear

WILLIAM T. EVJUE

Civil liberties in this country have been undergoing a sledgehammer assault in recent years, principally from forces known generally as McCarthyism. The technique—using fear as the weapon—is the same as in other periods of our history. The tactics—the extensive use of Congressional immunity, the careful exploitation of TV and radio—are somewhat different.

Fear has always been the bludgeoning instrument. Today it is the fear of communism. At the turn of the century intrenched greed was challenged by La Follette in Wisconsin. His program, including his advocacy of woman suffrage, was called "socialism." Fear was used to set off another assault against civil liberties in the World War I days when "pro-Germanism" was the battle cry and scare word. After the war the Ku Klux Klan rose in an orgy of Know-Nothingism which culminated in the "Romanism" of the campaign against Al Smith.

Fear of "communism," which finds its worst expression in McCarthyism, has made a mockery of our boast that we live in the land of the free and the home of the brave. An Air Force board of inquiry at Selfridge Field in Michigan has demanded the resignation of a young reserve officer on grounds of disloyalty—not his disloyalty but the suspected disloyalty of his father and sister. The board admits there is no question of his loyalty. In Los Angeles, Bishop Oxnam, one of the most distinguished of American clergymen, has been denied the use of an auditorium for an address, not because he is disloyal, but because he is "too controversial." He is "too controversial" because he has successfully fought the Know-Nothing smears against his loyalty.

Thus, fear today gives us the barbaric concept of guilt by blood relationship and guilt by accusation, in which the charge becomes more important than the trial, the evidence, or the verdict.

There are signs that the people are weathering this period, as they have those in the past. Election returns from around the nation indicate that they are taking their eyes off the medicine shows and are paying attention to their own security and freedom. Fear, at times, can be a powerful weapon, but it is not a durable one.

[*William T. Evjue is editor-publisher of the* Capital Times, *Madison, Wisconsin.*]

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How Crazy Can They Get?

by Janet Scott

AFTER you have worked twenty-seven years as a newspaper reporter it's hard to break the habit of saying, "Why don't you give me that for my paper?" Particularly if you have worked all those years for one paper. It's as natural as breathing for a reporter to pick up odds and ends of news, pictures, engagement announcements, wherever he goes—on his beat or off it. It's a reflex action to telephone the city editor about an automobile smash-up or a tip that a state commissioner plans to resign. Since July 16 I've been fighting a natural urge to call the *Knickerbocker News* every time I see a fire or hear of a death. And then I remember what I still find hard to believe, that twenty-seven years of conscientious work were swept away in a surge of McCarthyism.

It was on July 16 that the *Knickerbocker News,* Frank Gannett's Albany newspaper, announced on its front page that it had dismissed me, the paper's courthouse reporter. That was two days after I stood on my constitutional rights and refused to answer certain questions of a subcommittee of the House Un-American Activities Committee.

Technically I was on vacation at the time of my firing, though I was easily available if the paper had cared to notify me of my dismissal before the notice was plastered in a two-column box on the afternoon of July 16. That morning I attended the final session of the hearing in the Federal Building in Albany. I was home in my apartment in the afternoon when a Tri-City Newspaper Guild officer telephoned to tell me about the newspaper piece. My letter of dismissal didn't arrive until the next afternoon, when a Guild committee had already had a session with management.

It was in the late fall of 1925 that I went to work for the Albany *Evening News,* later merged with the old *Knickerbocker Press* to become the *Knickerbocker News.* Born and brought up in Albany, I was hired to assist in the society department. Nobody seemed interested in the fact that I'd received a B.A. degree in June, but the editor was apparently glad to find someone who knew how to spell Albany names and could keep the complicated relationships of local families straight. I became society editor of both the *News* and the *K. P.* and later got to be a reporter on these papers and their successor. I covered a variety of beats and for four years, until the summer of 1950, I wrote a signed daily feature column. In the fall of 1950, when I was candidate for Congress on the American Labor Party ticket, the paper shifted me to the courthouse beat, always my favorite assignment. It included the Court of Appeals, the Appellate Division, two parts of the Supreme Court, the County Court, the Surrogate's Court, the district attorney's office, the county clerk's office, the election board, and county offices.

The paper made no criticism of my objectivity, fairness, or competency as a courthouse reporter in connection with my dismissal. By the way, there were some highly controversial cases on the court beat in recent years—A. L. P. election fights, reinstatement efforts of New York City teachers suspended for refusing to answer questions on alleged Communist affiliations, the banning of the International Workers Order from the state insurance field, injunctions against strikers, the arrest of a Republican college student who carried an "I Like Ike" sign to a Truman whistle-stop rally in Albany during the 1952 Presidential campaign.

As for my background: My father, who died before I finished school, was an attorney, taught at Albany Law School, and was active in the Democratic Party. He belonged to the Fort Orange Club and to Philip Livingston Chapter, Sons of the Revolution. My mother was a church organist, the city historian for many years, and a member of Mohawk Chapter, Daughters of the American Revolution.

I was graduated from St. Agnes School (Episcopal) in Albany and in 1925 from Wellesley College. For a time I was a member of the Junior League of Albany. My community activities included serving on the boards of the Albany Inter-Racial Council and the Albany branch of the National Association for the Advancement of Colored People, speaking for the local Defense Council of World War II, and serving on a Y. W. C. A. committee. A charter member of the Tri-City Newspaper Guild, I was on its executive committee for nineteen years, every year since its founding in 1934. I was treasurer of the Guild and in 1945 was president. Thanks to the Guild contract I obtained thirty weeks' severance pay from the Press Company when I was fired.

Early last June newspaper stories from Washington said the Velde committee would send a subcommittee headed by Representative Bernard W. Kearney, (Rep.) of Gloversville to Albany in July to investigate alleged Communist activities in upstate New York. The reports predicted a probe into unions in defense plants, "certain members of the American Labor Party," and state government workers. I was served with a subpoena on June 15 and at once showed it to my editor. He had a page-one story written about it, saying that my name had been mentioned in a Washington hearing in 1947 and that I had run for Congress on the A. L. P. ticket. Meanwhile I continued

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with my newspaper work as usual, and the general reaction of my fairly wide assortment of friends to the subpoena was, "How crazy can they get?"

When I appeared at the hearing on July 14 the committee refused to accept a written statement from me about my reasons for declining to answer questions concerning political affiliations. My statement explained that I was invoking the Fifth and Sixth amendments, as well as the First Amendment guaranteeing freedom of religion, freedom of speech, and freedom of the press, but that "I would like to base my refusal to answer questions entirely on the First Amendment, because as a newspaper reporter and as a citizen I feel so strongly on this issue." The rejected statement also included quotations from the 1953 convention resolution of the American Newspaper Guild, C. I. O., criticizing inquisitional procedures of Congressional committees.

It is interesting to recall that three years ago Dr. Edward A. Rumely, executive secretary of Frank Gannett's Committee for Constitutional Government, cited the First and Fourth amendments when he refused to answer questions of the House Lobby Investigating Committee. The Gannett press backed him, and a contempt of Congress conviction was set aside by the courts.

The newspaper announcement of July 16 stated that my dismissal was "occasioned by gross misconduct." The statement declared, "Miss Scott, when questioned concerning her affiliations with the Communist Party, refused to answer and stood on her constitutional rights under the First, Fifth, and Sixth amendments." In reply to my written request for precise reasons for my dismissal the *Knickerbocker News* on July 29 sent me a letter containing the following edict: "Furthermore, this newspaper never has continued or will continue in its employ any employee whose attitude, actions, or activities bring or might bring this newspaper into disrepute or damage the relationship of this newspaper with its readers or advertisers. Any conduct of any employee violating any of the above principles is considered gross misconduct."

This arbitrary interpretation of "gross misconduct" would make mincemeat of the Guild contract clause guaranteeing employees freedom in their outside activities so long as the newspaper is not exploited. Under this definition I was lucky not to have been fired some years ago for helping the C. I. O. Council picket an advertiser, Montgomery Ward, or for helping arrange a Christmas party for children of A. F. of L. strikers against the Prudential Life Insurance Company. In fact, membership in the Newspaper Guild itself might strain relations with some advertisers.

The afternoon I received my dismissal letter I went down to the newspaper office to clean out my desk. In the city room I heard a cheerful story. It seems that in the morning the paper had received a report about an unidentified woman committing suicide. So someone was assigned to call hospitals and police precincts to see whether I had "done the Dutch act," as my former colleague called it.

If the report had been about some of those "cooperative" witnesses the Kearney subcommittee dug up, it might have been a different matter. But I'm hoping to be around for quite a while yet. I think every available person is needed in the fight to make sure that our country returns to its great traditions of freedom of speech, freedom of press, freedom of religion, and freedom of thought.

Challenge to McCarthy

by Corliss Lamont

ON TUESDAY, September 22, I was in my study near Columbia University writing the first chapter of a long-planned book on civil liberties when, at five minutes to twelve, the apartment phone rang and an unknown person announced that he had a subpoena for me from Senator McCarthy's investigating committee. I told him to wait and immediately called my lawyer, who said that I might as well accept it.

So I went down to the front hall of the apartment house and permitted a sour-faced man to serve me with the subpoena, a smudgy document typed in carbon with my name misspelled. It summoned me to appear before the Permanent Subcommittee on Investigations of the Senate Committee on Government Operations the next day at 2:30 p.m. at the United States Courthouse in New York City.

As I rode downtown in a taxi to see my counsel I was disturbed to realize that I had only a little more than twenty-four hours to prepare myself for the ordeal. A witness should be given at least three or four days between the serving of the subpoena and his appearance at a Congressional hearing. It is part of McCarthy's tactics to try to catch his victims off guard and to allow them no adequate opportunity to prepare.

I had known of course that one of the Congressional investigating committees would probably tap me eventually, and had been thinking off and on about possible courses of action. I had been especially impressed by an article in *The Nation* last May entitled How to Stop the Demagogues, by Philip Wittenberg, the attorney, and had talked briefly with him about the new approach he recommended. He had informally agreed to take my case if I were called by a Congressional committee.

Fortunately for me Philip Wittenberg was in town and was able to advise me. I arrived at his office at 12:30 on Tuesday and had three long conferences with him before my Wednesday deadline. We settled the general principles on which I would stand, and rehearsed

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CORLISS LAMONT, a director of the American Civil Liberties Union, teaches philosophy at Columbia University. His books include "Humanism as a Philosophy," "The Independent Mind," and "Soviet Civilization."

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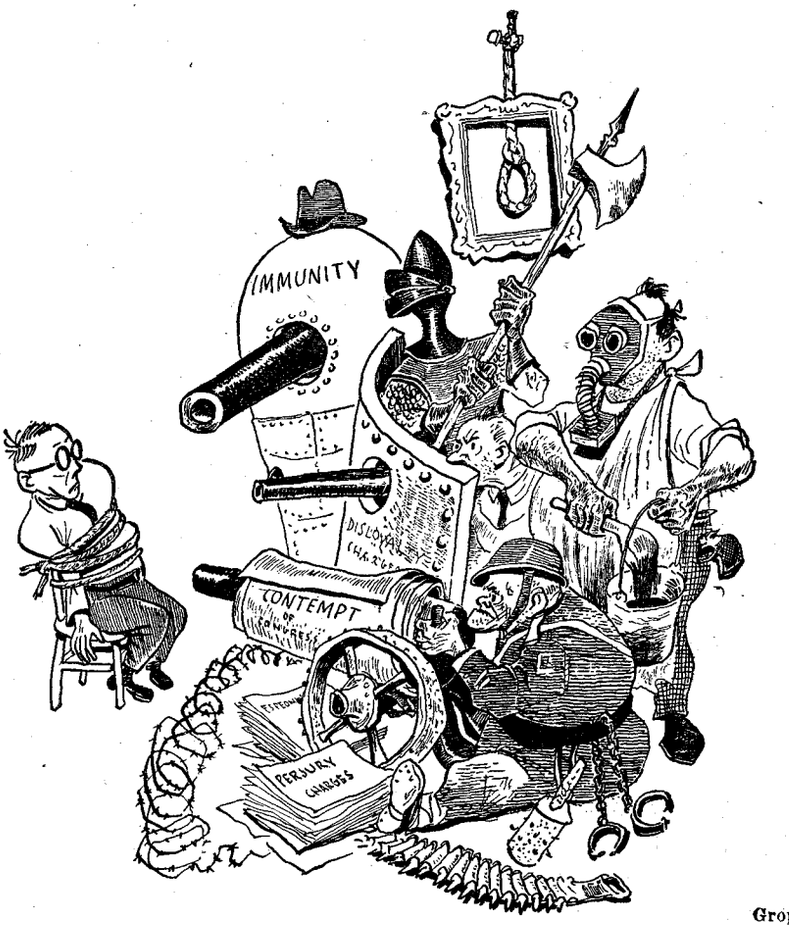
a number of probable questions and the type of answer or refusal to answer I should make to them.

THE EVENTS leading up to my subpoena from McCarthy are enlightening. The Senator had recently discovered that the Military Intelligence Section of the United States General Staff published in 1953 a pamphlet under the title of "Psychological and Cultural Traits of Soviet Siberia." Without my knowledge this army manual listed in its bibliography my book "The Peoples of the Soviet Union," a study of Soviet national and racial minorities, published by Harcourt, Brace in 1946. On the basis of this mere listing McCarthy widely asserted that the army document "quoted heavily" from me.

On September 9 Senator McCarthy gave the press excerpts from the army pamphlet and made the absurd claim that it was Communist propaganda. On September 11 the army disclosed that McCarthy had failed to release passages hostile to the Soviet Union; that only 100 copies of the manual had been printed, with some 40 distributed to high army officials; and that since the document had a secrecy classification as "restricted," McCarthy's unauthorized release of much of it constituted a violation of the espionage law. The army then proceeded to declassify the pamphlet from its restricted status "as a result of prior disclosures."

With these facts in mind, Mr. Wittenberg and I appeared before the McCarthy committee at the United States Courthouse early Wednesday afternoon, September 23. Senator McCarthy was of course presiding as chairman and was the only member of the committee present. He had announced this hearing as a closed executive session, which is supposed to be strictly private. Hence I was surprised to see about a dozen spectators, men and women, sitting in one corner of the room. In another part, by himself, sat the ever loquacious and pliant witness Louis Budenz, whom I recognized from his newspaper photographs.

McCarthy did all the questioning himself, constantly pacing back and forth at the end of a long table. Throughout the hearing he was neither abusive nor impolite but asked his outrageous questions in a quietly persistent manner. His personal behavior was far more restrained and dignified than that of the shouting, table-pounding members of the House Un-American Activities Committee—particularly Representatives John E. Rankin and J. Parnell Thomas—who had questioned me in Washington back in 1946.



Gropper

I TOOK my most decisive step at the very start when I asked permission to read a prepared statement objecting to the jurisdiction of the committee. Since an objection to jurisdiction is absolutely basic and takes precedence over everything else, McCarthy had to allow my statement to be put into the record. In this three-page document, which had been drawn up by Mr. Wittenberg in precise legal terminology rather than in eloquent language about the Bill of Rights, I challenged the legal and constitutional power of the McCarthy committee to inquire into my political beliefs, my religious beliefs, my associational activities, or any other personal and private affairs. I advanced three main grounds for this position.

In the first place, I cited the protections of the First Amendment and quoted the concurring opinion of Justice Douglas in the 1953 United States Supreme Court decision supporting the refusal of Edward Rumely, executive secretary of the right-wing Committee for Constitutional Government, to give testimony and produce materials before a committee of the House of Representatives. "The power of investigation," wrote Justice Douglas, "is also limited. Inquiry into personal and private affairs is precluded." In addition, I emphasized the First Amendment's guaranty of freedom of the press and urged that since Congress could not pass laws interfering with freedom of the press and since a Congressional committee can only make inquiries relevant to constitutional legislation, McCarthy had no right to ask me questions about the content and purposes of my writings.

In the second place, I relied heavily on the three-way separation of powers in the American government by which the legislative, judicial, and executive branches possess definite and limited functions. Thus I claimed that McCarthy's committee would be usurping the powers of the judiciary—from the Department of Justice through the courts

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and down to grand juries and trial juries—by inquiring into my personal beliefs and affairs. When in 1952 the Truman Administration instead of Congress decreed the government seizure of certain steel companies, the United States Supreme Court declared the action unconstitutional precisely because it violated the tripartite separation of powers. It did this although the Korean emergency was still acute.

In November, 1953, ex-President Truman, in his letter refusing to testify before the House Committee on Un-American Activities regarding the Harry Dexter White case, maintained that the committee was invading the rights of the executive branch of the government by subpoenaing him. In thus taking his stand on the doctrine of the separation of powers, Mr. Truman rendered valuable aid to the campaign to curb Congressional committees through the enforcement of this same general constitutional principle.

In the third place, I claimed that the statutes authorizing the appointment of the Senate Committee on Government Operations precluded an investigation of me on the basis of my written works, since I was not an employee of the federal government and was not even consulted about the listing of my book in an army publication.

Also in my opening statement I volunteered the information that I was not and never had been a member of the Communist Party. This I did in order to throw McCarthy off balance and to forestall his customary allegations in the press.

AFTER RECEIVING my statement in silence McCarthy launched into a long series of questions. I answered a few concerning recorded facts. Yes, I had published a book about the peoples of Soviet Russia, had written a chapter for "U. S. S. R., a Concise Handbook," and had sent a letter to the New York *Times* criticizing the decision of the United States Supreme Court in holding the Smith Act constitutional.

But most of McCarthy's inquiries I refused to answer, giving as my reason each time the objections expressed in my initial challenge to the jurisdiction of the committee. Almost every question the Senator asked was loaded: as, for example, "Did you know that Mr. A, who wrote a chapter in this book used by the United States army, was a member of the Communist Party?" "Did you know that Mr. B was a member of the Communist conspiracy?" and "Do you know any member of the Communist Party who to your knowledge engaged in either espionage or sabotage?" I should have preferred to say no to all such questions, but that would have weakened my legal position. And there was always the possibility that McCarthy was trying to trick me into a response that would somehow lay the basis for a perjury indictment.

Chairman McCarthy continued with this grilling for about an hour and then brought the hearing to a close. He said that I could not obtain a copy of the record because this session was "strictly executive." At the same time he ordered me to appear at a public hearing the following Monday in Washington. At this point McCarthy, having taken the position all along that my Wednesday hearing was an executive session and therefore "closed," suddenly announced that he was going to give a résumé to the press.

Accordingly he called the reporters in and talked to them for some thirty minutes, informing them that I was guilty of contempt on at least two dozen counts. McCarthy having made public his version of the hearing, I gave out to the newspapermen copies of my statement objecting to the jurisdiction of the committee, and discussed briefly the reasons for my stand.

On Friday afternoon a telegram came to my home from Senator McCarthy stating that my Monday hearing had been postponed. The wire added, "However, you are under continuing subpoena and both you and your counsel will be notified when your appearance is required." McCarthy went ahead with his public session Monday morning and examined other witnesses. To my astonishment the transcript of this hearing showed that at the very beginning the Honorable Senator had asserted: "Mr. Lamont has not been subpoenaed. He was notified that he could come today and purge himself of the contempt of failure to answer last week. Is Mr. Lamont here?" "There was no answer," the transcript recorded.

Of course McCarthy had sent me no such message and had said in his own telegram that I was still under subpoena. Apparently he thought that the cancelation of my hearing might be interpreted as a retreat on his part and felt obliged to give the false impression that the responsibility for my not appearing rested with me.

THE COURSE I followed before the McCarthy committee was similar in principle to that taken by Leo Huberman and Harvey O'Connor. Naturally each person summoned by a Congressional committee must make his own decision, taking into consideration all the particular circumstances in his case, as to the policy he will pursue. I believe, for instance, that reliance on the Fifth Amendment may be fully justified and that we must defend the right of witnesses to use it without any penalties being imposed upon them by either public or private authorities.

However, in seeking a court test to halt the excesses of Congressional committees we cannot utilize the Fifth Amendment. We must stand upon the First Amendment and the separation of powers in the American governmental system. It is significant that my own approach along these lines has received wide support from conservative as well as liberal and radical sources. Should other witnesses take a similar course, I think it would strengthen the growing challenge to McCarthyism.

The investigative function of Congress is helpful and important in its authorized purpose of preparing the way for new legislation. But over the past decade Congressional committees have constantly roamed far beyond their proper authority, have illegally pried into the private beliefs and associations of witnesses, and have flagrantly usurped judicial functions by, in effect, conducting trials of American citizens, finding them guilty, and bringing about their punishment. All I am attempting to do through my case, which I shall carry to the United States Supreme Court if necessary, is to have Congressional inquiries reasonably and specifically limited in scope and methods, according to the principles of the Constitution.

The unrestrained activities of the McCarthy committee, not to mention the committees headed by Jenner and Velde, have resulted in alarming violations of

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basic American freedoms and have been a tremendous factor in creating an atmosphere of fear and conformity inconsistent with the true functioning of democracy. Joseph McCarthy is engaged in burning not only books but the Bill of Rights itself. It is a great responsibility to find oneself suddenly in the front line of the continuing battle of McCarthy versus the American people. It is a privilege, too. And as a teacher, philosopher, and writer I naturally take my stand with all others who are striving to uphold the great American tradition of dissent and independent thinking.

The Fear I Felt

by Kermit Eby

ON A humid Wednesday afternoon a few months ago a man appeared in my office and lay before me a long piece of paper, a subpoena to appear before the Jenner subcommittee of the Internal Committee of the Judiciary of the United States Senate. Since it was the first subpoena I had ever received, I wondered for a terrible moment what crime I had committed. Then colleagues and students, friends and well-wishers, began to come in to congratulate me. "We are so glad it has happened," they said. "You will speak for us. You will take up our cause." I wondered whether they knew the fear I felt.

I thanked them all, and then I closed my office door and sat and looked at the wall. While I sat facing the wall, I learned again about fear—how terribly debasing it is, and how doubly debasing is fear of the unknown.

I knew the terrible possibilities of the "smear." I knew it was fantastic to argue, as Jenner did, that the hearings were made secret in order to protect those on trial. I knew the curiosity of people better than that. The minute the investigations were announced, speculation ran rife. One newspaper reporter called me and said. "I *assume* that you got a subpoena." The *Sun-Times* was right when it stated that "an invitation to appear before the committee casts doubt on a man's reputation."

Subtly corroding as is the smear, it is not the worst part of being dragged on to a platform and forced to swear to things which are perfectly obvious to you and to everyone who knows you. No one should have to defend himself under such circumstances. If the life he has lived is not defense enough, then no defense should be attempted. To defend myself upon such terms meant that I was guilty until I proved myself innocent! How do you meet such a ready-made suspicion of guilt? These men, Jenner and Butler, were out to judge the degree of evil in me. And there are none among us who have not, sometime, in some way, felt guilty. For men would kill in other men the evil they know in themselves.

HOW, I asked myself, as I sat there, could I meet the accusations of these men? Who was Jenner that he should judge me? And what could he do to me if he judged me unworthy? Another man subpoenaed, a law student, spent much time trying to find out the exact powers and prerogatives of the committee. He discovered that no one knew much about them. Practically, my colleague told me, the committee functions in somewhat the same way as the Inquisition did in Spain: the clerical arm (the committee) hands over the victim, following interrogation, to the secular arm (in this case, the university). The secular arm is responsible for chopping off the victim's head—that is, firing him. Of course, if the secular arm doesn't come through—and in this case the university stood firm behind its teachers—the whole system collapses.

But what the "secular arm" might or might not do was not the main thing on my mind. A lot of little questions tortured me. How do you meet your own quotes, pulled out of context? To whom did you give the five dollars for some obscure cause? And deeper still: what are the values on which you stand; what are the traditions which you uphold against the inquisitors?

I suppose that my first reaction to the last question was a simple and primitive one. I believe that if you live by the code of a man at all, if you dare call yourself a man, you say, "I shall answer for my life, yes, but not for another's." I remembered E. M. Forster's mildly seditious words on the subject:

> I hate the idea of causes, and if I had to choose between betraying my country and betraying my friend, I hope I should have the guts to betray my country. Such a choice may scandalize the modern reader, and he may stretch out his patriotic hand to the telephone at once and ring up the police. It would not have shocked Dante, though. Dante placed Brutus and Cassius in the lowest of hell because they had chosen to betray their friend, Julius Caesar, rather than their country, Rome.

Then I remembered that a refusal to answer questions once the process has started may mean contempt of court. But how is it possible to answer questions about yourself and not about your associates? I happened to be fortunate in not having to meet this contingency. My contacts with people who might be defined as "subversive" were always social or professional. They did not tell me, and I did not ask. I never knew a single self-confessed Communist. Others of my colleagues were not so fortunate. In order not to give aid and comfort to the committee, or in order not to inform, many of them remained silent behind the protection of the Fifth Amendment.

I did not remain silent. I told Senator Jenner, who comes from my home state of Indiana, what to me was obvious—that I had never been and was not now a Communist; that I had always, by virtue of my culture and convictions, been anti-authoritarian; that I belonged to the order of the Brethren by birth and

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KERMIT EBY, a member of the faculty of the University of Chicago, was formerly research director of the C. I. O.

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was both a minister and a professor by trade.

At this the committee seemed to become confused. They were not aware of these things, they told me, and they asked me no more questions. They said they were sorry to have called me up in this way. I asked them if they thought they were any sorrier to have called me up than I was to have been called up, and then I went back to my office. It was then that I began to feel angry.

Having been denied a public hearing, I learned later from the newspapers that Professor Ernest Burgess, Professor Anton J. Carlson, and myself had been forced to give testimony because we had been keeping bad company. But I insist that the company I keep is my own business, not Senator Jenner's, Representative Velde's, or Senator McCarthy's. I have friends in the N. A. M.—and in the purged unions. I insist now—and thanks to the committee I am going to insist more firmly and more often—on my right to speak to these friends, to continue having them in my home, and to continue to make up my own mind. Noel Sargent of the N. A. M. and Harry Bridges are both welcome in my home and for the same reason: they are interesting, and they teach me a great deal.

I really doubt, however, that I shall join either the Longshoremen or the N. A. M. Odd isn't it, that John Foster Dulles could associate with Alger Hiss and not be subverted? Odd, too, that we think we can try to negotiate peace with the Communists and will respect the treaties growing out of such negotiations. Or is it that we sincerely expect to negotiate with Vishinsky only when he stops being a Communist?

Certainly, I have gone to meetings where Communists were present, and I have probably appeared on some letterheads with Communists. I don't know of a better way of getting to understand Communists. But it bothers me that it is *they* who are always expected to convert me, and people like me, rather than vice versa.

LET US CALL things by their right names. To my knowledge none of the men called up in the present investigations of universities and colleges have ever been accused of sabotage or of any act breaking any criminal law on the books. The worst they have been accused of is political deviation.

Many of us remember those years when the government, through the La Follette committee, was investigating not labor but industry. The La Follette committee was questioning the right of one section of the body politic to hurt other sections economically. But the La Follette committee never concerned itself with the free flow of ideas, political or otherwise. And I do not remember

Brandel

Senator Jenner

that there was any whispering campaign to the effect that "John Jones, who lives down the block, used to consort with industrialists."

Jenner, Velde, and McCarthy, Inc., have not, to my knowledge, produced for trial one man engaged in a conspiracy. They have threatened, however, the free flow of ideas in terms of a second-rate cloak-and-dagger melodrama. "Conspirators," "spies," "traitors," "saboteurs"—these are the epithets which the good Congressmen hurl at the men whom they would "get." Westbrook Pegler, who seems to ride high on the investigation bandwagon, uses terms even saltier. Eager for a fist fight with those "dirty blankety-blank reds" in one paragraph, he demands in another an investigation of Eleanor Roosevelt, Justice Frankfurter, Henry Wallace, and Dean Acheson.

Ten or fifteen years ago we could have put Westbrook Pegler down as a hysterical journalist, relatively harmless, more than a bit touched by reading too much of his own propaganda. But we can no longer afford to shrug such hysterics off. In Senator McCarthy's view, as *The Nation* pointed out in an editorial, The Present Danger, on June 6, "the liberal Democrats in and out of the Senate have always been 'followers of the Communist Party line'; tomorrow they will be 'card-carrying Communists.' A recent cartoon in one of the labor papers showing a witness assuring a Congressional committee that he is not and never has been 'a member of the Democratic Party' clearly foreshadows the McCarthy line in the 1954 election."

THERE IS something both ominous and familiar about these men who build their careers on accusations. I am reminded vaguely of the Moscow purge trials and the old-time Bolsheviks who were forced to accuse themselves of having been "spies, saboteurs, capitalist warmongers, deviationists, filthy counter-revolutionists." That was another cloak-and-dagger melodrama, played on a larger stage, succeeding the somber "Boris Godonov" and "The Brothers Karamazov" instead of "Wintergreen, for President" and "Call Me Madam." What particularly sticks in my mind about the Moscow melodrama is the deep, unspoken desire *to be judged* inherent in the confession of an old Bolshevik like Bukharin. Here was the ecstatic cry of the individual seeking atonement in a last statement of complete guilt—"Citizen Judges, I am nothing . . . ."

We in America, out of our experience with successful democracy, surveyed the process which turned logical Marxists into breast-beating self-accusers with something of a sneer. They knew nothing of due process, those Russians; they could not be expected to understand that decent jurisprudence never permits a man to accuse himself. (And who seeks now to render the Fifth Amendment legally useless?) Some of us also realized that the Old Bolsheviks were confused about the difference between "community" and "state." They had had no experience with the community; they had set up the state in a new form and they could feel nothing but defeat when judged by their own creation. Their long, hyperthyroid confession of crime could only have been pre-cooked by the inquisitors, and yet their guilt was real. History having been their god, they were guilty of making a mistake before history and before their own misbegotten state. (And who seeks now to confuse Americanism with righteousness, government with God, and patriotism with godliness?)

None of us in America have ever really believed that this sort of thing

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could happen here. We have too easily held ourselves just a little above the "rabble" in the rest of the world. We have a superior system of law, you see, and a superior system of government—not to mention our superior standard of living. Ergo, our logic runs, we are a superior set of people.

We should begin to remember that the basic facts of human life—and politics—are pretty much the same everywhere. Just as in Germany, given the proper conditions, something deep in men responded to a Hitler, so here, given the conditions, something in the human grain responds to a McCarthy.

THE FEAR in our country today is almost as terrible as the fear which beset Europe between wars, when "the pauperized bourgeois became rebels of the right or left . . . many . . . lived on pointlessly, like a great swarm of tired winter flies crawling over the dim windows of Europe." Writing of those men who became Communists in an era when potatoes were burned before a starving world in order to keep prices high, Richard Crossman said:

> Their conversion, in fact, was rooted in despair—a despair of Western values. It is easy enough in retrospect to see that this despair was hysterical. Fascism, after all, *was* overcome, without the surrender of civil liberties which communism involves. But were Gide and Koestler so obviously wrong, at the time when they became Communists, in feeling that German and French democracy was corrupt and would surrender to fascism? . . . it jogs our memories so uncomfortably; and reminds us of the terrible loneliness experienced by the "premature anti-fascists," the men and women who understood fascism and tried to fight it before it was respectable to do so. It was that loneliness which opened their minds to the appeal of communism.

It is another kind of loneliness which opens our 1953 minds to the appeal of professional anti-communism. To understand the spell McCarthy casts over a public which, like any public, is basically non-inquisitorial and committed to minding its own business, you must understand the present fear in America. It is not the fear of hunger but rather fear of the hungry. Our executives are the busiest, our productive plant is the biggest, our farmers are the most secure, and our people are the best-dressed in the world. And yet, by and large, we are as afraid and lonely as the tired winter flies who crawled across the dim windows of Europe.

For the rest of the world keeps reminding us that we are rich and they are not. America awaits lethargically the stroke of midnight when the coach will turn back into a pumpkin. After all, the coach is partly built of such fragile stuff as fear of war and preparation for war. If we can only hunt down enough of the Bad Men who if driven into the desert will take our guilt with them, perhaps the coach will remain a coach after all.

Communism, born of hunger and despair, doles and war, broken values and desecrated ideals, is a hard, cruel, narrow, and yet strangely visionary religion. The new faith, of which Senators Jenner and McCarthy are the prophets, is born of full bellies and the fear of insolvency, and is called, interestingly enough, anti-communism. It is not at all visionary.

The inquisitorial mind is as likely to be hatched on Main Street, America, as in Seville or Moscow. And since it is, in general, a painfully literal mind, lacking imagination, Senator Jenner's view of me was mistaken. He was ostensibly looking for Communists, and I could not oblige. And yet I was guilty of the crime he was *really* looking for. I was guilty, all my life, of having been a sectarian. I was guilty, too, of not holding the new faith of anti-communism any more than I had held the Communist faith preceding it. And the thing which saved me, individually, from both, was a sense of community transcending the state. Behind the community of Brethren I come from is the American tradition and behind that is the Judeao-Christian tradition, and the heritage of Greece. "Citizens of Athens," said Socrates.

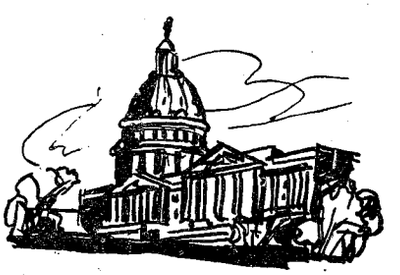
Since our world seems no closer than was Athens to solving the dilemma posed by Socrates, I should like to make my own position clear. I believe, with Albert Einstein, that no teacher, no intellectual, can afford to cooperate with an inquisitorial process; he does so on pain of losing his soul. I would go farther and say that no man who is a decent member of his community can afford to cooperate either.

Only by choosing as Socrates did can a man be directly responsible to the community and to those values which cannot morally be rendered unto Caesar. The teacher, to my thinking, has one primary responsibility—to the students whom he teaches and through them to the interests of humanity as distinct from the interests of any pressure group or nation-state which would presumptuously set itself up as sovereign over the human family. A secondary responsibility is a corollary of the first and does not conflict with it. The teacher should be loyal to the duty he has undertaken—to try to discover the truth and, as far as possible, the whole truth.

I DO NOT KNOW how far things will go before the reaction against anti-communism sets in. "For it is easier," says Crossman, commenting again on "The God That Failed," "to lay the oblation of spiritual pride on the altar of world revolution than to snatch it back again. This may be one reason why communism has had much more success in Catholic than in Protestant countries. The Protestant is, at least in origin, a conscientious objector against spiritual subjection to any hierarchy."

That is why the churches are next on the list of Senator Jenner's appointments. The intellectuals first, because they are easy picking, since like Socrates they tend to take the hemlock in personal protest, one by one. After the universities the church and the synagogue, because a free pulpit is an insult to men who would have everyone believe this bold, backward faith of anti-communism. There is not room in the United States for both honest preachers and those who place anti-communism above all other faiths.

If the great universities go down, it will be twice as hard for those who come after. My desire, as I stood up with my colleagues to be counted, was to tell all rightful members of communities everywhere in America: "We may not be much. But do you understand that only our bodies stand between you and the desecration of your freedoms?"



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IV. THE AGE OF CONFORMITY

THERE might not have been a witch hunt except for the cold war, but a crisis in human freedom has been in the making for a long time. The cold war, indeed, is as much a symptom as it is a cause of the current crisis of democracy. This underlying crisis is, of course, a highly complex affair; in one form or another it has been the major intellectual preoccupation of the post-World War II period. It would therefore be a grave misjudgment to conclude that the current witch hunt will automatically subside, as similar frenzies have spent their force in the past, once the cold war is terminated. Some of the aspects and dimensions of this basic social crisis are illustrated in the section which follows.

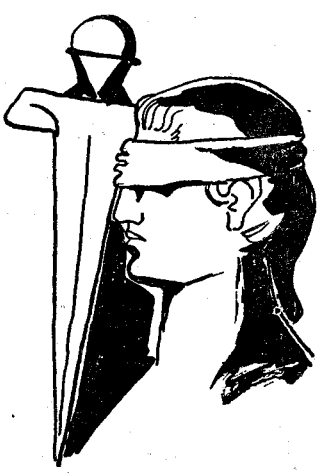
The Autocatalytic Loss of Freedom

by C. H. Waddington

FREEDOM is only possible in a group; the isolated man is always in solitary confinement. Even the adolescent daydream of being marooned on a desert island with one pretty girl would amount in practice to a prison sentence, and if there were a few more women, one of them would be functionally a mother-in-law. Indeed, a small isolated village contains hardly enough people to persuade a lively youngster that he has scope to develop with freedom in all the directions that appeal to him. This is one of the basic reasons, I think, for the flight which is seen all over the world from the countryside into the big cities.

But now these cities have become so big that they have passed the optimum size for freedom as far as the small villages fall below it. To develop freely and follow his own genius, man requires a certain range of well-known and accepted neighbors or friends to provide a basis of stability, as well as fairly frequent encounters with new situations and new people which challenge him to enlarge his horizons.

The technological advance of our civilization has got us into a paradoxical situation in this respect. The small or medium-sized city, anything from fifty to a few hundred thousand, provides perhaps the best social conditions for the free development of the human personality, but it no longer provides the stimulus of the most exciting material novelties; it is the streets of the metropolis which seem to the young man or woman to be paved with gold. By and large it is only in the great cities, whose inhabitants are numbered in millions, that the exciting and up-to-date things are happening, and it is there, it seems, that one will meet the exciting people. But this usually turns out to be an illusion. The big-city life, which is the characteristic expression of our mass-production civilization, fails as a rule to provide either of the two basic social conditions for personal freedom. It is only too difficult to keep the long-term friends who are the stable foundation from which individual development springs, and as for new and stimulating acquaintances, there are either too many of them or too few, either continual superficial stimulus, the cocktail-party life, or blank loneliness.



It is not easy, then, to make a life in which one feels both that one is involved in exciting and important happenings and that there is a reasonable balance between stability and novelty in one's personal relations. On top of the difficulties which this raises for the free development of personality, big-city life adds another major frustration. A mass community can only be operated if the actions of the individuals are controlled so that they do not conflict too grossly. The control cannot be by personal contact, as it is in a village. There must be central administration of regulations about health, schooling, taxes, hours of work, and a host of other things. In the sight of these regulations the individual is no longer a person but a mere unit—one item among millions who are put through the machine. And as the numbers to be catered for are enormous, the same depersonalization occurs even in matters of recreation and enjoyment. A man being carted out to Coney Island at the week-end is treated as though he had about as much individuality as the grains of sand which are dumped on the beach.

It seems inevitable that as man seeks greater control over his environment his enterprises will grow larger and the organizations for carrying them out involve a greater number of people, demanding in consequence an ever-increasing measure of control over the activities of the individuals concerned. This is a price that has to be paid for bold and large-scale undertakings. One might hope that the people involved would do their best to mitigate it; that if matters

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C. H. WADDINGTON, fellow of the Royal Society of Great Britain, professor of animal genetics, Edinburgh University, is the author of "The Scientific Attitude," "Science and Ethics," and other books.

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were decided democratically, there would be an insistence that the control reached only the minimum distance into private life that was absolutely necessary for the functioning of the large organization.

But that presupposes that the conditions of the individual life are already satisfactory; that each man exercises, and enjoys exercising, his liberty. In the present conditions of our big-city life and mass civilization that is not the case. As we have seen, very often neither the factors of stability nor those of novelty are satisfactory. Observation suggests that in practice the consequences are that people whose life is more and more encroached on by impersonal administration become terrified or antagonized by the idea of thinking for themselves. They are offered only a few standard choices in their hours of work, entertainment, means of travel, the types of houses they live in, the kind of food they can eat at restaurants, and all the thousand and one other things which mass-production makes available to all in identical repeated units. Why should not thought and opinion come in identical repeated units, too?

In this way conformity comes to be valued for its own sake. The city dweller carries out with such strain the mental balancing act which enables him to get along as a floating depersonalized unit shuttling back and forth through the mass services from one job and apartment to another that he is terrified of anything which might endanger his precarious equilibrium. Thus the products of freedom—individuality and unorthodoxy—are regarded as eccentricity or worse.

It seems that, beyond a certain point, the more men are handled as depersonalized identical items, the more they themselves come in effect to behave as though that is all they are; and moreover that is all they will allow their fellows to be. This is not the slave mentality; it is the "unit of personnel" mentality. Its effect is that when loss of liberty by depersonalization has gone beyond a certain point, the process tends to become self-reinforcing—autocatalytic in scientific terminology—and goes on faster and faster.

The great question for our civilization is whether the magnitude of our enterprises is so great that their administrative needs demand a degree of depersonalization which is beyond this threshold. If so, we shall either lose personal liberty and find ourselves in totalitarianism and the age of the communal man, or we shall change civilization and reduce the scale of things to one which is more consonant with human dignity and freedom.

Liberty and the Private Groups

by Grant McConnell

FOR many years Americans have rejoiced in a very nearly unique capacity for organization. Our propensity for "joining" has always been commented on by foreigners, sometimes in derision but often with respect. More than a century ago De Tocqueville saw in our readiness to band together in associations an important defense against the dangers to liberty that threaten the powerless individual in a democratic society. Since then associations have multiplied and grown in size and power to such an extent that the phrase the "organizational revolution" was a cliché almost as soon as it was coined.

Today, faced with this yet unfinished revolution, we find ourselves perplexed and uneasy. We seize upon the products of our association but wonder if somewhere there is not a hidden cost which we have failed to reckon. From time to time someone sees the cost as levied against the "public interest." A cry goes up against the grasping selfishness of this group or that. However, the charge misses its mark, partly because we have no effective gauge for measuring unjust demands but more because we are prone to recognize and even accept selfishness in groups as well as individuals.

In truth, there are serious grounds for concern. These are found not in the relationship between the groups and society but in that between the groups and their component individuals. We can no longer be sure that the presence of associations is an unqualified guaranty of liberty. It has long been part of the liberal outlook to regard as benign the existence of power in private, or "voluntary," associations. After all, if a member is outraged by his club or union, he has only himself to blame; the door is open for his departure. Moreover, so we have held, there are many associations—if one does not satisfy, another will.

But actually it is not wholly true that membership or non-membership is a matter of choice. A doctor may hesitate to leave his local medical association on grounds of disagreement with its politics or its manner of reaching decisions; access to association-controlled hospitals is too important to him. There are groups departure from which means costly renunciation of paid-up rights to pensions, burial costs, and other benefits. A union member is more likely to swallow his dissatisfaction with the organization than to forgo practicing his trade in the locality. There *may* be an alternative organization he can join; more often there is not. Rival unionism is a cardinal sin in the labor movement. The multiplicity of organized groups may be a sufficient protection of the "public interest"; it does not protect the individual.

WHAT OTHER protections do they offer? The easy and often repeated answer is that the overwhelming majority of our private associations are democratic. This is true if it means there are provisions for elections by majorities and for state-

GRANT MC CONNELL, a member of the Department of Political Science at the University of California, is the author of "The Decline of Agrarian Democracy."

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ments from the leaders. That an association has made material gains for its members is not wholly relevant; these gains only enhance the importance of the individual's rights within the group. If we look for individual guaranties inside the associations, we meet only disappointment. With very few exceptions the constitutions of private associations are without provisions insuring the elementary rights which in the United States Constitution we venerate as essential. Bills of obligations of members can be culled from the fundamental documents of most private associations but a bill of rights almost never. The offenses which may not be committed under penalty of fine, suspension, or expulsion are set forth in vague terms. Prohibition of such offenses as speaking ill of the organization, its leadership, or its members may secure disciplined action in external affairs. It is not a substitute for a bill of rights.

PERHAPS NOWHERE in our society is the myth of unity more sedulously cultivated than in private associations. The strongest pressures are exerted to maintain a façade of unanimity, even in the choice of leaders and the execution of doubtful policy. In elections the typical procedure is to ask for approval of a single slate of candidates. Election contests, it is held, are disruptive to the whole association. Even the vivid demonstration by the International Typographical Union that a broad degree of tolerance for internal conflict is compatible with strong and effective unionism has failed to weaken this belief. The I. T. U. has a competitive internal party system but has achieved material gains for its members exceeded by few other groups.

In 1943 the American Civil Liberties Union surveyed the problem of democracy in trade unions. The findings were bleak: discrimination for reason of race, sex, national origin, and political belief, restraints upon speech and expression, defective trial procedures, highly centralized power, ineffective checks on both the expenditure of funds and the use of power, long tenure of officers, and so on. A second survey eight years later reported little change. And this was a period of mighty growth in union membership.

It would be a mistake to assume that the problem is peculiar to the labor movement. It is perhaps more somber here because the aims of labor continue to be democratic. Elsewhere we have become inured to the spectacle of large groups of corporation stockholders who resign themselves to seeing their hope for dividends frustrated by the ruling oligarchies. Such rebellions as have occurred only provoke our amusement. Farm organizations have sought to develop means for consultation with their membership on questions of policy, but these, like the referendums of the Chamber of Commerce of the United States, serve chiefly to generate vocal enthusiasm. Control largely rests in the conventions, which with few exceptions afford overwhelming advantages to existing leadership.

Given the central problem of maintaining an association's existence, there is the strongest kind of drive to eradicate dissent. More insidious than outright suppression is the attempt to secure homogeneity of membership. Potential dissenters are not invited and when found inside are allowed to depart without the offer of compromise. This would be a matter of slight importance were it not for another trait of organizations—their desire either to eliminate rivals or clearly to differentiate themselves from others. The net result is a steadily growing residue of outcasts for whom no organization stands as spokesman and defender.

At times exclusiveness seems the essential characteristic of a membership organization. In part this is the result of the necessity of underlining the desirability of belonging; if the organization is open to everyone, to belong is no privilege. The open organization tends to have no members in any vital sense—as, for example, the Republican and Democratic parties; the loyalties it commands are meager and difficult to exploit. The organization which restricts its ranks, which screens applicants, which is "exclusive" has made membership infinitely desirable. And one of the first requirements for achieving this lofty position is that no rivals shall be brooked. Feeling against enemies of the organization is mild in comparison with the fury loosed upon some budding rival that seeks to gather in the rejects of the original group. War on nuclei of potential rivals goes on relentlessly. It may even take the form of hostility to unorganized individuals who are not possible candidates for membership in the group. There is no more melancholy illustration than the attack launched by the American Farm Bureau Federation on the government programs designed to help a clientèle which, while within agriculture, was one to which the federation itself made no appeal.

These are not problems that invite complacency. Private associations are in the very web of American life. They are essential guardians of its liberties. Their mere existence, however, is not sufficient. If their justification for being is in any part the insurance of liberty, they must either as closed societies maintain the simple safeguards of democracy within themselves or become open societies with all that this implies.

Unless the private groups adopt constitutional reforms that at present seem wholly foreign to them, reform will be imposed from without. The suggestions that have been made—and they come from liberals—are for legislation which shall be enforced by the regular courts or by administrative agencies appointed for the purpose. Our knowledge of past judicial treatment of labor unions does not inspire confidence; the prospect of an appointive agency does not quiet our fears. Nor does the memory of Hitler's destruction of the private quality of the free associations of Germany. Yet each day the problem becomes more urgent. We are faced, therefore, with a choice of taking steps that may seriously weaken one of the main bulwarks of liberty or acquiescing in the gradual spread of coercion behind that wall. It is not a pleasant dilemma.

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Our Dream of Comfort

by Allan Seager

ONE day last fall the lady next door was clearing her front yard of leaves. She was not raking. She was pushing a thing that looked partly like a go-cart and partly like a lawn-mower; it had a rotary brush and hitched to it was a canvas scoop with an aluminum floor. I said it certainly saved raking. She said it certainly did, but—with a touch of embarrassment—she said the newer models had two little wheels under the back end of the scoop so it would run more easily.

There you have the fog we all stumble in, the dream of comfort. Producing and consuming, we tread our pleasant round, and any pangs or sharp intrusions of reality can be allayed by purchasing a new gadget, maybe with two little wheels on it.

The nation's earlier dreams were hopes of a somewhat larger kind than ours, stronger and full of sap that drove our founders to cross oceans and mountains, to massacre innocence because it was in the way, and coarsely to astound the world with vigor. These earlier visions were dignified because they always had a touch of human necessity, and in acting out none of them did people look like fools.

The religious concerns that sent their little ships into Massachusetts Bay were too austere to be comprehensible now, but, as we are taught, they had a harsh nobility about them, and by almost a lucky chance Roger Williams turned them into an ideal of religious freedom that has kept pretty well. The English oppression we threw off was real, and the flow of migration westward got its force from a natural hope, perennial but false, the dream of something for nothing. Think of the single man, early, who joined no wagon train, who started west out of St. Joe alone and afoot in a beaver hat, a long black coat, sometimes carrying a carpet-bag, wearing cowhide boots. The prairie grass would wear the boot-sole smooth so the foot could get no purchase and it would slip and kick up behind. In a few days the Achilles tendon would grow too sore to walk, and about that time he would begin to meet sly Indians who would sell him moccasins so he could walk on to find his new claim, his new home, all free or only fifty cents an acre.

And this is only one of the aspects of the settlement. The frightful labor entailed by accepting the gift of an empty continent drove quite ordinary people into such prodigies of courage and ingenuity that they created our country's greatest hero, a tough and irresponsible character, the Individual, now dead of course but still remembered, still touchingly referred to as if he might return. And somewhere along the line of trails and little springing towns grew up his quaint but indigenous command, "So live that you can look any man in the eye and tell him to go to hell." The grab-bag was officially emptied in 1890 by the United States Census Bureau when they announced the frontier was closed, and although Jim Hill wanted to continue the Great Northern from the China shore, that particular dream was over. It gave us confidence.

Overlapping it from earlier were the hopes of the already settled for some tools to help them out—the woman in the soddy hoping for well-pipe and a hand-pump so she would not have to lug water, the Kansas farmer wanting harness and plowshares, and in the staid towns along the Ohio rock oil for lighting that drove the whalers out of business. When there was nowhere else for them to go, the energy and furious invention loosed by the settlement turned themselves into manufacturing to supply these wants. The peddler with his pack on his back entered history and was replaced by the drummer with the U. C. T. button in his lapel. In the first years of this century it was not silly for a boy to say he wanted to be an inventor when he grew up. Goods were then quite simply good because they were in the main necessities, and a few led to the amenities of life. Manufacturing had not yet become an arbitrary act. The poles of supply and demand were still believed to exert an almost equal force, and in spite of the crooks and the waste, manufacturing acquired a public standing and a momentum that has not yet run down.

THE IVORY GATE through which our present dream first issued was Ford's mouth. Two of his massive accomplishments are known to schoolboys: the Model-T put the nation on wheels, and his assembly line established the second great tool of mass production as Eli Whitney had the first; but even more powerful, hypnotically so, were the results of his statement in July, 1914, that he was going to pay every workman at the Highland Park plant $5 a day. This is usually considered to mark an epoch in the labor movement and it did, but it also announced the great equation for the first time—producer=consumer; and Ford himself saw it clearly: every one of his workers could now buy a car. The producer was no longer over here and the consumer over there. They were identical, and the final justification for a cheap new product and a fast handy way to make it had been found, a market built right into the factory.

The First World War delayed the full exploitation of this discovery, but shortly afterward we saw in ten years the rise of the advertising business, the *Ur-type* of its present modes, for instance, the quite early application of fear in the Listerine ads, the spread of radio, one of its chief messengers, and the almost providential popularizing of Freudian psychology. The specialization of manufacturing techniques implied by the assembly line increased, and John Dewey was teaching at Columbia. The

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ALLAN SEAGER has written three novels of which the last, "Amos Berry," was published last spring. He was educated at the University of Michigan and at Oxford, England, and is now on the faculty at Ann Arbor.

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dream was nearly ready to be tried out. It waited on time and a word.

Before 1929 security was something you gave on a loan. By 1933 "security" was beginning to acquire its present constellation of emotional colorings. At first, while the Depression still held, it seemed to mean economic safety and to allay the fear of its possible loss; appropriate ritual gestures were and are still being made—the institution of old-age pension plans, hospitalization plans, and such.

DIFFERENT FROM the Germans, the Napoleonic French, and certain upper-class Southerners like the *vates,* Calhoun, we never dreamed our wars before we fought them. After the Revolution we accepted them reluctantly under the proddings of our New England inheritance, the Puritan conscience, and because of this none of them were public events of the same intensity as the Depression; rather they were accumulations of private catastrophe. Nor have we ever acted out an imperial dream. Our foreign adventures are limited and commercial or they are kindly rather pathetic attempts to make friends with gifts and to suggest, never to impose, a political system which has worked successfully for us but which our beneficiaries barely understand and are not ready for if they desire it. We never wanted political hegemony. Professor Allan Nevins recently guessed that the last forty or fifty years of our history will be remembered chiefly as the period in which "America has been projected into world leadership," and he is probably right both in gist and in grammar—the passive voice is peculiarly apropos.

But to the single man, as Stendhal pointed out long ago, the history in which he is a mote means nothing. He may wander around the battlefield, hear the cannon fire, get splashed with mud as Marshal Ney races by with his suite, but when it is all over, he asks wonderingly, "Have I seen a battle and was this battle Waterloo?" The aloof guesses and ultimate assessments of history point only to the peaks and we have to live in the valleys.

Until the atom bomb obliterated it, science had helplessly acquired a mystique, an aura of goodness, and any kind of logical social arrangement or organization science imposed was assumed to be also good. The assembly-line represents its big incursion into industry, and since then industrial engineers and time-study men have steadily narrowed the scope of each job to promote efficiency. Given a few drinks or the rare spontaneous flash of perception, most workers, shop or white-collar, will be candid enough to say how dull and monotonous their work is. Labor troubles seem to be caused not entirely by actual grievances; often they are aimless spurts of resentment against jobs so piddling no man could put his heart into them, and once the little revolt has occurred the whole union organization, still touchy after its victories of the last two decades, must clank into place and back him up. Any sense of craftsmanship, of responsibility to the work in hand, has long been necessarily stifled. To replace it a system of baits has been arranged: for executives all the pleasures of the expense account, the company hunting lodge, the company apartments in Florida, the company picking up the tab in "smart" restaurants; for the lower ranks there are the security baits of insurance and pension plans, as well as the company athletic teams and the company picnics, the incessant suggestion that the pleasures of life come not from the home but from the company.

IF THE PROCESS is successful it makes them docile, but puzzlement and confusion are apt to lie beneath the docility, salted by the impacted residue of an archaic common sense, and frequently the crucial question gets tossed as high as consciousness, "The work I do every day is stupid. How come it's worth all this?"—not that he feels himself overpaid, rather the opposite because of the stupidity. (The personnel manager of a big corporation told me, "a thousand bucks a day is not enough pay for a guy on a line," and he explained that his personal soother, his only gimmick, the one that had vaulted him into $35,000 a year, was to try to get his foremen to call their gangs by their first names. "That's all?" I asked. "That's it. Only you have to fuzz it up with graphs and charts, make a production out of it.") No pattern of intra-corporate communication will reveal the answer to this question even if it is corporately known. A meeting of the minds will in fact only make the problem clearer. There are still too many old-fashioned political considerations, although one single man might dope it out if he had time to contemplate a corner-bolt in a girder long enough.

When the Second World War ended we were ready to enter our dream of comfort. Its connections with reality were more tenuous than the earlier American dreams but they hold well enough to be plausible. Considering the whole situation, you could say the dream was inevitable.

The pressures of war had taught us to make more things, to grow more

"In McCarthy Country"

EVERYWHERE in Wisconsin—whether Milwaukee or Cedarburg—you find the same excluding ambition for a material Utopia, here and now. Yet often in the past few months I have wondered how real this wealth is. It was an old farm hand who said to me: "There are nine meals between orderly government and anarchy." Talking to doctors, mechanics, and business men, I have heard, again and again: "We're on thin ice; a slump tomorrow and all this would be back on the shelf."

It is an appreciation of this ever-present threat which constitutes the greatest, if latent, factor in the emotional climate of Wisconsin. The need is for security, for fixed questions with fixed responses, for the elimination of social, financial, and political risk. Thus communism has been presented to the emotions of Wisconsin in a far more tangible shape than Nazism or German imperialism.

This is something which hits home: the ordinary man—and there is such a genus in Wisconsin—understands communism's intimate if antithetical relationship to his way of life. When he realizes it also as an immediate enemy, not only in terms of military warfare but in real and unreal terms of spies, fellow-travelers, and intellectuals (the words become synonymous in his mind), every grain of patriotism is aroused: "We've gotta save America from these so-and-so's."—*From an article by Anthony Bailey, In McCarthy Country, in the London* New Statesman and Nation, *October 31, 1953.*

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things, than ever, enough so that an army could be supported in Korea while they poured in spate out of the factories, far beyond our real needs or the needs we had been taught. The major problems of production had been solved. Only minor ones were left. Designers and engineers are whipsawed between the demands of competition and the demands for replacement sales, between "quality control" and "planned obsolescence." Ideally an article should look solid and well-made so that people will want to buy it once; it should last long enough so they will want to buy it again but not last too long. After a certain term of faithful service it should fall apart like the One-Hoss Shay. This is a hard problem of construction and its solution has been approached only in nylon stockings.

All these goods have to be sold, that is, bought, although buying somehow implies a pure initiative in the buyer, judgment exercised, comparisons made. To excite the initiative, smother the judgment, and forbid comparison became almost duties to the economy, and the means were at hand.

Since the war TV has been added to the advertiser's armory of newspapers, magazines, and radio, and the buyer is assailed so constantly that he finds it hard to resist. It is not only the repetition that is calculated to weaken him; it is also the shrewdness of the appeal. Before the war they had learned how to make the logical conscious pitch, like the one to fear, the one to snobbery, but now the appeals are wider and deeper. The social engineers and psychologists had found in Madison Avenue another area of our national life they could muscle into. Perhaps "muscle into" is inaccurate; it may have been more like a wedding of cousins. There is a kindred goofiness that may have brought them together, a brisk interest in mangling the language, a reluctance to call things by their right names, an almost idiot concentration on means instead of ends. If, as it seems, one of the grand purposes of social engineering is to influence people and mold their opinions without their knowing it, the advertising business offered new chances. In the argot the phrase was "depth motivation," an assault on the customer's unconscious by using psychologically "correct" colors in layouts and all kinds of downstairs ap-

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peals in copy and photographs. In theory the customer is brought into the store not because he needs or even thinks he wants to buy. Dazzled and enchanted, he is drawn in by a spellbound libido, a victim of cunningly presented symbols of sex and violence. The success of these programs is real: the goods are sold.

Since most of us are producers and consumers, to turn the great wheel of our economy all the smaller wheels must turn, or we cannot not buy. If enough of us were seized by a hideous perversity and began to stuff our surplus money into coffee cans or old socks under the mattress, it would start the collapse of one of the most elaborate structures of abstractions ever devised by man, like falling through a brittle mile-high jungle gym, snapping lines of credit all the way until the final crash. But we are not likely to do this because we haven't enough surplus money. There is no need to save it. We are buying, on time, the comforts we do not need, and the corporation has us fully insured.

MEANWHILE houses get smaller, becoming dormitories and TV parlors. The decorum and ceremonies of life withering, growing obscure, living becomes "informal." There is a real increase of leisure in which we could recreate ourselves if let alone, but we are defrauded of it by the invasion from the centralized sources of entertainment. Reading and conversation dwindle into occupations almost as outmoded as carding wool in the firelight and they are indulged in crudely and on the fly—namely, Spillane. Why the almost simultaneous rise of baby-sitting and geriatrics? Once the old folks sat with the kids because it was natural for them all to live together, but no more of that. Magazines and divorce courts are full of in-law trouble, not that people hitherto always loved their in-laws. It is only that, earlier, their presence was taken for granted while now they are a problem. Geriatrics offers an answer, partly a cheer-up science for the aged, partly an organized crusade to get them jobs because there is not room for them in the house and they can't live on their pensions. In a manner both pathetic and sinister, the public schools offer themselves as "second homes" because it is still vaguely felt there ought to be homes somewhere.

The comforts in the little house are genuine. American gadgets are the envy of all nations, but comfort is not seriously the end of life and some of the gadgets save neither time nor money. Why are potatoes "whipped" in an electric mixer when it is obvious they can be done better with a fork and a fork is easier to clean? Possibly because owning a mixer like owning a Titian evokes pride and wonder. And why do people pay four or five hundred dollars for a freezer when frozen peas, thawed, are not fresh peas again but another vegetable like canned peas and no better; and a delicacy, frozen wild duck, emits a stupefying odor of dirty feet both in the cooking and the eating? Why are we so supine?

Verifiable surmises seem to run this way: a philosophical background lies in the writings of John Dewey, especially in their dilutions and perversions, notably the primacy of the group over the individual. And the social engineers have forced it to permeate the spurts and flashes of the advertising mentality in this way: the old snob appeal has been lowered in height—that is, you are no longer taught to fly higher than your group, age, salary, geographical or whatever. You must fly with it. No one must be more equal than another. Continuous and subtle pressures are applied to make you feel wretched if you don't have what "everybody" else has around you. Further, the very process of manufacture demands conformity of behavior. No one can make standardized parts in his own way, can he? From the ubiquitous sources of schools, work, and advertising we are all wooed to the goodness of conformity, so much so that McCarthy seems to be a symptom rather than a cause.

The state of the world is reported to us, the menace of atomic warfare, Russia, the envious hatred of other nations, but there is as yet no terror. We are comfortable and these threats reach us merely as an irritating unease. "Security" now includes the staving off of these threats, keeping them properly beyond the seas. So far we have done pretty well, and if the boat is not rocked we may continue. If the job is stupid, it is better to let the disgust seep out in ulcers, a coronary, or a series of unavoidable accidents than to commit any rash or open acts. Even our wars were not fought to gain territory or, except the Revolution, to change anything, not even the Civil War. They were fought to keep things as they were and any sequential changes came unbidden. We were generously willing to spring to the aid of other countries, but, returning, we wanted things to have kept the same.

IT IS POSSIBLE to believe that the *Führerprinzip* is dead, outmoded because primitive, and that the Russian use of fear and brutality to enforce conformity will be unnecessary. The inhabitants of any country who willingly reduce themselves to statistical units are surely asking for tyranny; yet the tyrant may not appear. The ambitious politician may have to depend on simple ghosts and his own naked charm like Henry Clay, because the techniques of mass manipulation are becoming so many and so complicated that he may not be aware they exist or be able to understand and use them if he does, and since we will soon be conditioned to jump to no others, naked charm may come to be too personal, too suspicious a quality for us to accept comfortably. We are in a phase where we hire people like movie stars to be publicly unique, but this may pass and the raw ungrouped person, politician or whatever, will become faintly criminal instead of merely disturbing as he is now.

Besides, if a democracy is coming to mean that everybody must be like everybody else, it will be undemocratic to have a leader. It is illogical and foolish to conceive of a sinister group operating from a Chestertonian head-center whose aim is to turn the country into what may be called, in again an outmoded phrase, a camp. Given time, if nothing intrudes, we will be so god-damned comfortable we will vote it in ourselves.

It is an act of faith in our bewildered common sense not to believe what follows, but it may be that, by 1984, the automatic factories will have come and we will all be lying down, indoors, clinically sun-tanned, chockful of vitaminic goodies, fully entertained, none of this crude Huxleyan busyness perceptible, all doubts exorcised, no guards, no cruelty anywhere, no liberty either (what was that stuff?), comfortable, as happy as we can be, and George Orwell will have turned out to be a nasty wrong-headed old man who told us stories to make our flesh creep.

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V. THE WATCHING WORLD

IN THE past we could afford the luxury of exhibiting the American tradition to world scrutiny despite its conflicts, confusions, and paradoxes. America was variety; America was promises. Today it has become extremely important to reflect an image of American freedom which is not only consistent with our pretensions and exhortations but will inspire enthusiasm and confidence. In the past, we might ignore the consequences flowing from the projection of conflicting symbols and slogans; today we cannot. An indulgent European opinion once thought of us as young and foolish; it takes us quite seriously today.

For one thing, the world has grown smaller. If modern communications did not spell the difference, the kind of exchange that takes place at the United Nations would. Whatever we say or do at the U. N. is immediately exhibited to world scrutiny. If the U. N. is a "glass house," the world is only a larger model. We cannot hide Joe McCarthy. We cannot treat him as some never-mentioned skeleton in the closet, known to the family but not acknowledged to the world. The image of McCarthy is impinging on world vision as the image of America. How, then, would we measure the impact should McCarthy become the Republican nominee or the President of the United States in 1956? A year ago the notion that he might be a serious Presidential contender was lightly dismissed, but since what the French call "La Bombe Brownell" was dropped, it is taken quite seriously by conservative American editorial opinion.

Today McCarthyism is rapidly isolating the United States—even from such a close and indulgent neighbor as Canada—and our allies are appalled by the McCarthy-like arrogance displayed by American representatives at the United Nations while the President and his closest advisers voice mild sentiments of opposition to McCarthyism in other contexts. To force a rapid and widespread realization of the extent to which McCarthyism menaces the American tradition and American leadership, we must recall the horror which the world felt for the Nazi and Soviet purges and explore, with Claude Bourdet and Kay Boyle, the abyss now yawning between informed American opinion and its European counterpart on this major issue. To us McCarthyism is another American folly; to them it is the yardstick by which they measure our purpose.

This Strange America

by Claude Bourdet

Paris

IT IS worth while sometimes in the course of one's life to look back and recall what one's ideas were ten or twenty years before. I do it occasionally and find not too much discrepancy, generally, between my thoughts then and now. Ideas alter in the course of time, but my political hopes, my appreciation of my own and other countries have not changed too much. I still don't believe the Germans are "bad," although they kept me a year in a prison camp; I just think as I did then that they are easily led astray. I still think the British have an admirable tradition, and a sanity in all things which makes them an element of political balance in the world, despite an extraordinary lack of brilliance. I still feel Russia is a world in the making, a kind of huge child nation, and as such should be treated with the respect due to courage and youthful achievements—not with the respect due to wisdom nor with the hate earned by innate wickedness. But when I remember what I thought of America before and during the war, I am astonished at how differently I feel now. I am not the only Frenchman or European who is aghast when he remembers America at that time and looks at it now. Perhaps Americans should themselves try to remember.

We felt America was really the land of the free. We knew of course that this fanaticism of freedom had its drawbacks, that public opinion was so powerful that it made farsighted government difficult. We understood that was why Roosevelt could not use American power to stop Hitler before he launched his attack on mankind. But this was no inherent sin of the American system. Its slowness of adaptation was one of its guaranties against falling into blunders and abuses.

We liked the violent honesty of the American press—at least of the American leading papers. We were aware of the smaller significance of class barriers compared to Europe; we had heard about the equalitarian trends of society despite great differences of wealth. We knew there still were grave racial prejudices but also that an active battle was waged against them. Above all, we were glad that although young and violent, America was tolerant. When intolerance won for a time, in our own country, one often heard: "This kind of thing couldn't happen in America."

SOME MAY SAY that this was largely wishful thinking, that America was neither better nor worse than other countries. I don't know; I think in some way all countries earn the reputation they acquire. Things were not as simple as they seemed to us of course. But the American way of life was certainly something to be proud of.

Then the war broke out, we were defeated, and we started the underground battle. Our ill-fed companions carrying pamphlets or bombs under their shabby

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CLAUDE BOURDET was founder and editor of the Resistance newspaper Combat. *He is now editor of the Paris* Observateur.

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coats, typing secret orders in back shops, organizing poorly armed combat groups in the mountains never complained about America's slowness in coming into the war. They felt the huge machine was preparing, doing its job on its own lines; they hoped to be alive when it started. However, I remember there was a deep discontent when the Americans supported General Giraud against De Gaulle; we couldn't understand how a citadel of democracy and freedom could back a general whose political and social ideas were a century old and to whose support many of the Vichy opportunists were rallying, glad of the chance to turn their coats before it was too late.

AGAIN this was politics; strange politics, but one could let it go at that. Then the war was won; some of us were still alive. The Patton army found me in Buchenwald with some 50,000 other semi-corpses from all over Europe. We came back. When we had recovered enough to understand, we were astonished at many aspects of the post-Liberation world: at De Gaulle's mistakes; at the Communists' useless violence of language and slander; not least, at the curious behavior of many Americans, civilian and military, who seemed to be collecting around them the most disreputable opportunists, men and women who had outrageously flirted with the Germans during the war. This, we thought, only happens because Americans are naive and good-natured; they are easy prey to this kind of vermin.

Then there was the Truman Doctrine, the Marshall Plan, and the beginning of the Atlantic policy. Those among us who were slightly anxious about Marshall aid and who opposed more firmly the North Atlantic pact did not do so from any suspicion of American internal politics. The feeling was that America was well-meaning in most of its moves but that it was dangerous to divide the world into two camps: it helped to create fear and tension on both sides; it prevented us from playing the part of an intermediary in international relations. Moreover, we thought it dangerous for a country like ours to live "on the dole"; it was bound to corrupt our political morale. The Communists, of course, spoke of American imperialistic capitalism, warmongering, and spirit of oppression. But this was a bit too crude, especially after the Prague affair. Instead of hurting America, Communist propaganda was for many years its best ally.

I THINK it was only in 1950 that French opinion became acquainted with McCarthyism. Of course, the few Frenchmen who read regularly the American, particularly the liberal American, press had noted even before then a number of strange happenings which seemed to us contrary to the American tradition. But so strong was our faith in American democracy that we believed these were but the passing antics of some small gang, like Huey Long's many years ago. I think I was the first Continental journalist to point out that it might be worse than that.

I had come to America in May, 1950, for *The Nation's* meeting on atomic energy and had met many honest Americans who seemed to be anxious about the trend of things inside the country. Moreover, I had read the press in quite a different atmosphere from that in which one reads it abroad, and had been surprised at the importance given to the Senator from Wisconsin and even more at the support given to him by Cardinal Spellman speaking to a meeting of Catholic veterans. I was in Washington those days and witnessed the proceedings in the astonishing investigation of Owen Lattimore. When I expressed my surprise at the embarrassment and lack of vigor of Senator MacMahon, who had seemed to be full of sense and strength in his support of Lattimore the day before, an American journalist said, "That's because of Spellman's speech yesterday." Then I sensed something had really gone wrong. But when, back in France, I wrote about the "witch hunt," even my closest friends laughed. Today, however, you find the words *"chasse aux sorcières"* in most French papers.

Americans have often asked me why deeply distressing affairs like the John Service and the Alger Hiss cases and the many dismissals of educators under political pressure have not aroused more comment in France, when the case of the Trenton six and even much more that of the Rosenbergs caused such a shock. I suppose it is because in France, an old country which has lost so many lives in so many wars, the price of a single human life is still estimated high. For a time some Frenchmen—I was among

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them—felt there was a fair chance that the Rosenbergs might be guilty; Communist propaganda on ther behalf made that seem even more likely. But many people reacted as most American liberals did and found the sentence too heavy. Then at the end of 1951 two well-known barristers were asked by a group of French Catholics to study the case thoroughly. Neither had anything to do with communism; they were not even politically active, and one of them was definitely conservative in feeling. Their findings were so amazing that one of the barristers left immediately for Rome and managed to convince the Holy See that here was much worse than a miscarriage of justice. This produced the two Vatican interventions which aroused so much comment everywhere, especially in the United States.

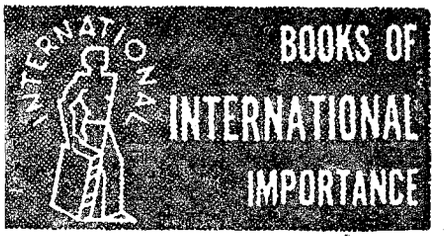
THE CASE shook France because thousands, probably millions, of Frenchmen felt that if so few voices in America were raised to defend the Rosenbergs it was not only because the diminutive American Communist Party had tried to use the case for its propaganda but also because most Americans were afraid to take steps which might make them targets for witch-hunters' attacks. Whatever is behind the various currents of French opinion, there is no doubt that the death of the Rosenbergs was the beginning of an awakening. In a very small local newspaper edited by the Roman Catholic curé of a little French parish I read last summer: "The death of the Rosenbergs could signify the death of our illusions."

Another phenomenon which makes the French not only distressed but angry is the appearance of McCarthyism, apparently under American pressure, in our administrative life. I should probably write "influence" instead of "pressure," for in many instances there is not so much pressure as a kind of inquiry or advice. French statesmen have become so dollar-minded that they think they must submit to any American whim, even before it is clearly formulated. But the point is that many Frenchmen who are not ready, yet, to recognize that this is a hardly avoidable result of the Atlantic system prefer to speak of submission to American pressure and thus blame America instead of blaming themselves for not resisting, or for putting in office weak and submissive politicians, ready to sell everything for an extra dollar.

An intolerable attempt made by the Ministry of Education last year to organize the witch hunt in French universities and schools and the recent decision forbidding a young Communist student to qualify for the National School of Administration have been considered in many circles to be a direct result of American McCarthyism. An increasingly popular slogan among intellectuals, civil servants, and others fighting against the witch hunt is revealing: *"Pas de McCarthyism en France."*

The so-called French "neutralists" have for five years stressed the fact that their policy did not reflect distrust of America. Today, however, not because of anything the "neutralists" say but simply as an effect of McCarthyism, the tendency here is to look at America with intense distrust. Even people who try to study the logic of the international situation, uninfluenced by feelings pro or con, look at American developments with a certain anxiety. Some ask bluntly: Is America going fascist? It is possible that our minds have been confused by Communist propaganda, which for popular consumption created a picturesque and simplified image of fascism not fitting the American situation.

MOST PEOPLE, including the Communists, have tended to think of fascism as following the Italian, Spanish, and German pattern. But is it not possible to conceive of a fascism which would remain outwardly in accordance with the practices of representative democracy? In a country where the mass of the population enjoys a decent standard of living a group of politicians working in close connection with the leaders of industry and finance and the owners of the press, broadcasting, and television could mold the minds of their fellow-citizens and develop a system of supple yet absolute control of public opinion which would enable them to leave the voting system untouched provided they did not violate two permanent principles. First, they must not directly injure the interests of any large group of citizens which, if it starts questioning their leadership on one issue, might question it on all. Second, they must choose as a target for attack and as a scapegoat for every conceivable evil a group of people so clearly defined that they can be "hunted" with-



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out creating any great fear among the mass of voters.

It seems to me that Communist hunting in the United States serves such purpose admirably. Communists are so scarce that practically nobody in the United States has ever met one; thus any amount of fear and horror can be aroused against them. Also the hunt for Communists being directed mainly against the intellectual world and persons in government, it is probable that the average American does not feel directly threatened. Under such conditions a new kind of fascism—shall we say "demo-fascism"?—might conceivably emerge which would work as a democracy in all respects save one: there would be no place for contradiction of the "accepted truth." This would be injected daily into the people's minds by thousands of "free" politicians, journalists, and radio commentators, all governed at first by the fear of losing their jobs and, in the end, conforming naturally to a rigidly molded national outlook.

Of course, the price to be paid by America will be enormous. The ultimate failure of any totalitarian system is a result of the fact that it loses its own faculty of appreciating events correctly and thus makes huge mistakes, such as Hitler's in 1938-39, or the Soviet blunders up to and during the Korean war.

In many European countries McCarthyism has already caused nearly as much distrust and even direct dislike of America as that felt for Soviet Russia. It remains to be seen whether any large group of Americans will realize the extent of the danger before the system hardens to a new kind of regime, outwardly the same, inwardly the opposite of everything which used to be called American. Such a regime could only be ended by the world cataclysm it is sure to bring about.

"Sting Me with the Theremin"

If you don't want a man unhappy politically, don't give him two sides to a question to worry about: give him one. Better yet, give him none. Let him forget there is such a thing as war. If the government is inefficient, top-heavy, and tax-mad, better that it be all those than that people worry over it. . . . Give the people contests they win by remembering the words to popular songs or the names of state capitals or how much corn Iowa grew last year. Cram them full of non-combustible data, chock them so full of "facts" they feel stuffed, but absolutely "brilliant" with information. Then they'll feel they're thinking, they'll get a sense of motion without moving. . . . Don't give them any slippery stuff like philosophy or sociology to tie things up with. That way lies melancholy. . . . So bring on your clubs and parties, your acrobats and magicians, your daredevils, jet cars, motorcycle helicopters, your sex and heroin, more of everything to do with automatic reflex. If the drama is bad, if the film says nothing, if the play is hollow, sting me with the theremin, loudly.—*From "Fahrenheit 451" by Ray Bradbury, by permission of Ballantine Books.*

Farewell to Europe

by Kay Boyle

FOR over a quarter of a century I have lived in Europe, and, perhaps because of the physical distance between me and my country, when other aspects of American life were lost in vagueness, America's tradition of individual freedom remained singularly clear. During those years my forbears acquired a special stature, and perspective lent them a meaning possibly greater than was actually theirs. For instance, I have always believed that my great-great-grandfather on my mother's side, a General Bauer who served on George Washington's staff in the Revolution, was a man who felt so deeply about political freedom that he volunteered to give his life for it. I believe, moreover, that in making the choice he did, in the time he made it, he not only played a part in the creating of a nation but accepted as well the individual responsibility of establishing a tradition of social freedoms, and I am proud he made that choice.

There are others among my people who belong to America as well as to me, and through the years, their lives have been part of my own. There was my great-grandfather Moore, a doctor, who after much thought and with some misgivings left Philadelphia with his family and settled in Kansas at a time when the Indian fires burned along the horizon at night. He was "almost overcome by the vastness" that confronted him, but he recognized it as a site for individual endeavor, and winter and summer he traveled by horse and buggy through that vastness to his scattered patients every day.

His favorite child, my mother's mother, was a school teacher at sixteen, and raised her own children on the Kansas prairies, and I think of her as a pioneer as fearless as any who broke new soil. I know that her eldest daughter, Nina E. Allender, the official cartoonist of the National Woman's Party and a staunch fighter for the American wo-

KAY BOYLE is the author of some twenty-five books, including, most recently, "Thirty Short Stories," "His Human Majesty," and "The Smoking Mountain." She is the wife of Joseph M. Franckenstein, a former Foreign Service officer with the Department of State, and has spent the last five years in Germany, where she was a correspondent for the New Yorker. She has made frequent visits to France to collect political and other data for use in the book she is now completing on contemporary France.

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man's franchise and her rights before the law, belongs as well to a tradition to which I am committed by pride. I shall tell my grandchildren, as I have told my children, of the Children's Crusade that crossed America in the early twenties—a straggling crusade of children and their mothers who walked across the continent to Washington to petition the White House to set their fathers free. When the marching children, some ill, all weary, came through Cincinnati, my mother opened our doors to them, and she washed and fed them, and when they left she walked to the outskirts of the city with them, helping them carry their placards reading: "My father is in prison for expressing his opinion"; or "I have never seen my father. He is still in prison because he didn't believe in war."

I HAVE SPOKEN of these forbears of mine to Europeans, and their presence with me on foreign soil helped establish a common tongue between us. I have talked of my father's father, Jesse Peyton Boyle, whose people came from Ireland, and who was a man of passionate opinions, furiously expressed. He was a lawyer and the founder of the West Publishing Company in St. Paul, and his belief in the rights of the American male citizen brought him daily to the point of apoplexy. In the years I lived abroad my grandfather, my mother, and the others were there in explanation and justification of the things I said about America. They were present when Europe looked to us for liberation from the Nazi armies, and they were there when that liberation came. They went with me, these ardent believers in the spirit of free inquiry, into the political prisons of Franco Spain and into the processing centers of Western Germany, where refugees from the East waited for asylum. Indeed, it would perhaps be more accurate to say that I went to these places because my forbears were with me, and that it was they who led me there.

But by 1949 a change had come into the faces of Europeans when they spoke of America, and my forbears seemed to feel uneasy in their revolutionary roles. In 1951 scattered editorials appeared in the foreign press, and Europeans asked curiously, incredulously, about "the democratic tension" in America. Which of the basic freedoms was the voice of one man condemning, they asked, and which did he honor, and—far graver—which of the freedoms could survive his daily abuse? In late 1952 and early 1953 the press of England, Germany, France—although never one organ of the Communist Party—spoke bitterly of this man, an American, whose name was not Eisenhower, or Dulles, but something quite different in essence from either of these.

One German newspaper editor, a close friend for several years, and a tough, seasoned fighter for democracy, struck the table with his fist and said: "If there is another side in America as articulate as this one man's, then get more and more evidence of it to us over here. I don't want to fill my paper with the reports of his accusations, with accounts of the suicides of honest men. I want to give the German people another America, an America as dynamic and eloquent as his. If his voice doesn't speak for your countrymen, then let us hear other voices ringing out. Only Einstein, once a German like me, spoke loudly enough for us to catch the echo over here."

"DON'T GO back to America now," a Paris *concièrge* I have known for fifteen years said to me in the spring. "It isn't your country any more"; and because of the silence that fell suddenly around us, I believed for a moment that my ancestors had died. As she washed the tiles of the entrance hall or peeled the potatoes for the soup at night, the *concièrge* spoke of one man only, and it was not Pinay or Laniel or even Mendès-France. It was an American, and his name was McCartair, and if he didn't like the look of your face, he'd subpoena you right in off the street, she told me. "Stay away from America the way the French who could manage it stayed away when fascism was in the saddle here. It doesn't last, fascism. It's a corpse that the ambitious try to pump the blood of life in every now and then. The French people will see it doesn't get any more transfusions in a hurry here," she said. When I spoke of other Americans to her, she shook her head, and she poured us each a glass of wine in sympathy. "There is only Monsieur McCartair," she said. "There is no other side."

For over four years I taught in a women's prison in Germany, and the director of the prison stands, a clear, pure figure, as strong as stone, against

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the grimness of that place. She is calm and proud, wise and humble, eager, and open, and uncorruptible, and gracious as few Germans have ever sought to be. One of the last evenings in Europe was spent in her small house near the prison, spent in talk, as had happened so many times before, with a group of students from the local university. She said to me then: "Write to us about the other America. It must be there."

And one bold, young student of political economy said that this "other America" on whom the common people of Europe had counted, and counted still, had no press even in America to speak for it. "The same kind of censorship through indecision is taking place in America now as once took place in Germany," the student said. "People can't risk losing their jobs by buying a paper that defends the freedom of the individual. So, one after another, these papers die. That's what happened in Germany twenty years ago; so the other side was never heard. That's what's happening in America today."

"Tell them when you get back," said the director of the prison, "that we had our demagogue too, and for a long time we laughed about him. We said that for the German people he was an impossibility. Tell them that when a dictator came to power in Italy, we said—out of our national contempt for the Italian moral fiber—that we, a democratic people, with the history of democratic trade unions like a strong backbone to support our economic life, could never be emotionally swayed as they had been. But little by little, while we talked of our traditions, the demagogue talked louder, and our civil liberties narrowed, narrowed, narrowed, until one day they were no longer there."

"Stay in Germany where you can say and write what you please," said the youngest and brashest of the students as we sat in the little house near the prison that night, and nobody thought to laugh at the irony of history.

"Don't go back to America until the tide has changed," were the words written in a letter from England that I carried in my bag. *"Don't go back to a state of mind that can justify a military treaty with Franco Spain by that impoverished word 'expediency.'"* And a message from a Spaniard in exile in the south of France lay beside the Englishwoman's letter, and it said: *"Wait to return until the campaign promises have been kept by your President concerning the Taft-Hartley law and the McCarran Act. The air in America will then be easier to breathe."* And the voice of a young Frenchman came across the frontier, saying to me: *"There are periods in the history of every country when there is no course left to the intelligent citizen but to stay away."*

And then, as if they had been roused from sleep, my forbears stood up from their chairs. The women among them waited, their eyes fixed gravely on me, for me to speak, but the men walked back and forth in agitation, and the little house near the prison trembled with the vehemence of my Irish grandfather's ire.

"No, this is the time to return," I said to the German students seated in the room, and to the Frenchman, and the Spaniard, and the Englishwoman, who were not there. "This is one of the times in history when one must go back and speak out with those of the other America clearly and loudly enough so that even Europe will hear."

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VI. CONCLUSION

The Present Danger

A Call for Leadership

WHAT positive measures can be taken to meet the present danger? We suggest that President Eisenhower still has a chance to regain control of his Administration and defeat McCarthy's frenetic drive for power. First, he must muster the support of Republicans and Democrats in Congress to defeat the program of his own Attorney General. In any event, as a minimum, he must prevent passage of legislation at the next session of Congress which would suspend the privilege against self-incrimination and permit the introduction of evidence acquired from wire-tapping. If Brownell and J. Edgar Hoover are successful in forcing this legislation through Congress, they will have acquired the essential techniques for the establishment of a police state. And to reassure the people that he means to oppose McCarthy, let him remove Brownell as Attorney General.

Secondly, the President must make it clear—and above all to McCarthy—that the executive power is his and that he does not intend to share it, much less surrender it, to the chairman of a Congressional committee. By precept and example he must encourage faint-hearted subordinates to stand firm against McCarthy's efforts to dictate policy, program, and personnel. This means that the President must plainly and decisively reject the concept of guilt by accusation. Resolute action by him could check the spread of this pernicious doctrine. The President commands unrivaled access to all the media of mass communication; let him use them. The responsibility will be his if he fails to act while there is time.

Let those who want the President to take these steps make it known to him. Let those who write editorials and compose sermons denouncing McCarthyism join in demanding that he act. Let every organization that has passed a resolution denouncing McCarthyism do the same. And people who want the President to act should act themselves: let them do locally and individually what they urge him to do officially and nationally. There is no dearth of issues.

In the third place, Mr. Eisenhower should call upon a group of outstanding citizens to help him realize his expressed hope that communism and espionage will not be political issues in 1954. Faced with difficult problems, Presidents have often appointed non-partisan commissions "to study and report." The task of evaluating the nature, extent, and form of the internal-security problem needs this kind of attention.

BUT THE APPOINTMENT of a commission would mean little unless the members were thoroughly pledged to the basic values of a democratic society. Such a commission should include men of the caliber of Judge Charles E. Clark, Judge Learned Hand, former Supreme Court Justice Owen J. Roberts, Admiral Chester W. Nimitz, William T. Evjue, Delbert E. Metzger, Robert M. Hutchins, Monroe Deutsch, Paul Hoffman, William T. Gossett, Telford Taylor, Charles P. Curtis, John Lord O'Brian, Monsignor John O'Grady, Dr. John McKay, Dean Griswold of the Harvard Law School. Until this commission has rendered a complete evaluation of the whole area of internal security and its reconciliation with the values of a political democracy, the President should attempt to prevail upon responsible Republican and Democratic leaders in the House and Senate to declare a moratorium on Congressional investigations of "subversive" or "un-American" activities.

And since the make-up of such a commission would be of vital importance, the chief counsel and staff should be recruited with great care; the ablest young men in our law schools should be utilized and such experts drawn from academic life as Harvard's Zechariah Chafee, Jr., Robert K. Carr of Dartmouth, and Robert E. Cushman of Cornell. The Federal Bureau of Investigation must not be permitted to wield any veto power or even influence the selection of members

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of the commission or its staff, since it would be assumed that one of the subjects to be investigated would be the role of the F. B. I. in internal security. If the President cannot induce Congress to grant an appropriation adequate to finance such a commission, then let him ask the Ford Foundation to divert some of the $15,000,000 allocated to the Fund for the Republic for this purpose. Better that the commission operate without power of subpoena than that Congress should dominate its investigation. For one thing, the Congressional power of investigation should be scrutinized by a body over which Congress itself has no control. The report of such a commission would go far toward relieving the suspicions and unreasoned fear that the demagogues have inculcated.

AND WHAT about the loyal opposition? The Democrats cannot afford to play 'possum with the issue of McCarthyism, hoping that it will embarrass and divide the Republicans. They cannot hope to win by proving that they are more "anti-Communist" than McCarthy—but nicer about it. Nor will pious protestations of patriotism and loyalty ward off his phony accusations. They cannot afford to be placed on the defensive, for they will discover, if they have not already done so, the difficulties of proving that they are *not* witches.

The opposition to McCarthyism must be a principled opposition. It must reject categorically the notion that communism can be fought as a heresy; it must scotch the myth of the omnipotence of communism. It must not permit McCarthy to exploit his version of the "Communist menace." It must expose his demagoguery by pointing up the real issues and by showing what his voting record has been on these issues. It must formulate a foreign policy consistent with its domestic program and one that does not breed McCarthyism at home. It must vigorously defend civil liberties. Let Mr. Stevenson, following the example of Wendell Willkie, volunteer to defend some government employee called up for a loyalty hearing or let him argue the legality of the "listing" of "subversive" organizations by the *ex parte* action of the Attorney General.

The Democrats must recover their nerve. They must learn to stand erect in the presence of J. Edgar Hoover. They

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must steel themselves to risk his displeasure by cross-examining him when he testifies against them. They must realize that the Democratic Party is directly in the line of McCarthy's fire. They must, finally, expose the real conspiracy which today threatens the nation's internal security: namely, the conspiracy of McCarthy and his cohorts to subvert the Bill of Rights. The Democrats have leaders—one need only mention Senator Lehman—who have consistently opposed McCarthyism. Their counsels must prevail, for the party cannot hope to win—indeed, it may not survive—if it flinches on this issue.

If the Democratic Party is to resist McCarthyism, then the labor movement must encourage it to act in this fashion. To this end, the unions must quickly step up the tempo and scale of their political-action programs. Politically they have tended to lean on the Democrats; now the relationship is likely to be reversed. If labor has enjoyed a degree of immunity from the witch hunt these last few years, it has been because its allies, the Democrats, were in power; the situation has now changed.

FINALLY, the President should draw upon that backlog of respect and admiration which led many independent voters to select him as their choice to provide solid, constructive leadership in a time of trouble. He must reject the advice of the smooth manipulators and the cynical power-grabbers. He must now act for himself and for the millions who elected him and for his country. He must mobilize all Americans of good-will, conservatives and liberals, Democrats and Republicans, alike.

Senator McCarthy has now clarified the fundamental issue. He has made it plain that he is driving for the Presidency, for total power, for the ultimate destruction of democratic procedures. On this issue there should be no disagreement between conservatives and liberals. Men of good-will may disagree on domestic policy; they must agree on the basic issue of fair play and respect for constitutional freedoms. Has the President the courage, the imagination, the intellectual grasp of the principle at stake to lead the way, saving both his Administration and the vital contribution which American leadership can make to a world in trouble?

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THE titles which appear below represent the personal selection of *Nation* reviewers and editors as the most interesting books published in 1953. We present them as a guide to Christmas buying.

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A Passage in the Night. By Sholem Asch. Translated by Maurice Samuel. Putnam's. $3.75.

Fahrenheit 451. By Ray Bradbury. Ballantine Books. Cloth, $2.50; paper, 35 cents.

The Writer in America. By Van Wyck Brooks. Dutton. $3.

For the Sake of Heaven. By Martin Buber. Translated from the German by Ludwig Lewisohn. Harper. $3.

Chéri and the Last of Chéri. By Colette. Farrar, Straus and Young. $3.50.

Great English Short Novels. Edited and and with an Introduction by Cyril Connolly. Dial Press. $6.

Henry James: The Untried Years, 1843-1870. Volume I. By Leon Edel. Lippincott. $5.

The Heavy Day. By John Hart. George R. Preston. New York. $2.

Charles Dickens. His Tragedy and Triumph. By Edgar Johnson. 2 vols. Simon and Schuster. $10.

The Life and Work of Sigmund Freud. Volume I. *The Formative Years* and *the Great Discoveries, 1856-1900.* By Ernest Jones. Basic Books. $6.75.

Prince Bart. By Jay Richard Kennedy. Farrar, Straus and Young. $3.95.

Long March. By William Styron. *Discovery No. 1.* Edited by John W. Aldridge and Vance Bourjaily. Pocket Books. 35 cents.

Little Novels of Sicily. By Giovanni Verga. Translated By D. H. Lawrence. Grove Press. $3.

Joseph Wood Krutch

Ben Jonson of Westminster. By Marchette Chute. Dutton. $5.

My Mother's House and Sido. By Colette. Translated by Enid McLeod and Una Troubridge. Farrar, Straus and Young. $3.50.

Evolution in Action. By Julian Huxley. Harper. $2.75.

Lélia: The Life of George Sand. By André Maurois. Harper. $5.

Dead Man in the Silver Market. By Aubrey Menen. Scribner's. $3.

Man, Time, and Fossils. By Ruth Moore. Knopf. $5.75.

The Web of Life. By John H. Storer. Devin-Adair. $3.

Circle of the Seasons. By Edwin Way Teale. Dodd, Mead. $4.

Nobody Say a Word and Other Stories. By Mark Van Doren. Holt. $3.50.

Freedom and Fate: An Inner Life of Ralph Waldo Emerson. By Stephen E. Whicher. Pennsylvania. $4.75.

A Good Man. By Jefferson Young. Bobbs-Merrill. $3.

Keith Hutchison

The Historian's Craft. By Marc Bloch. Translated from the French by Peter Putnam. Knopf. $3.

James Madison: Secretary of State, 1800-1809. By Irving Brant. Bobbs-Merrill. $6.

Mission with Mountbatten. By Alan Campbell-Johnson. Dutton. $5.

Triumph and Tragedy. By Sir Winston S. Churchill. Houghton Mifflin. $6.

The Diplomats, 1919-1939. Edited by Gordon A. Craig and Felix Gilbert. Princeton. $9.

The Journals of Lewis and Clark. Edited by Bernard DeVoto. Houghton Mifflin. $6.50.

The Traitor and the Spy: Benedict Arnold and John André. By James Thomas Flexner. Harcourt, Brace. $5.75.

The Worldly Philosophers. By Robert L. Heilbroner. Simon and Schuster. $5.

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Crossword Puzzle No. 545

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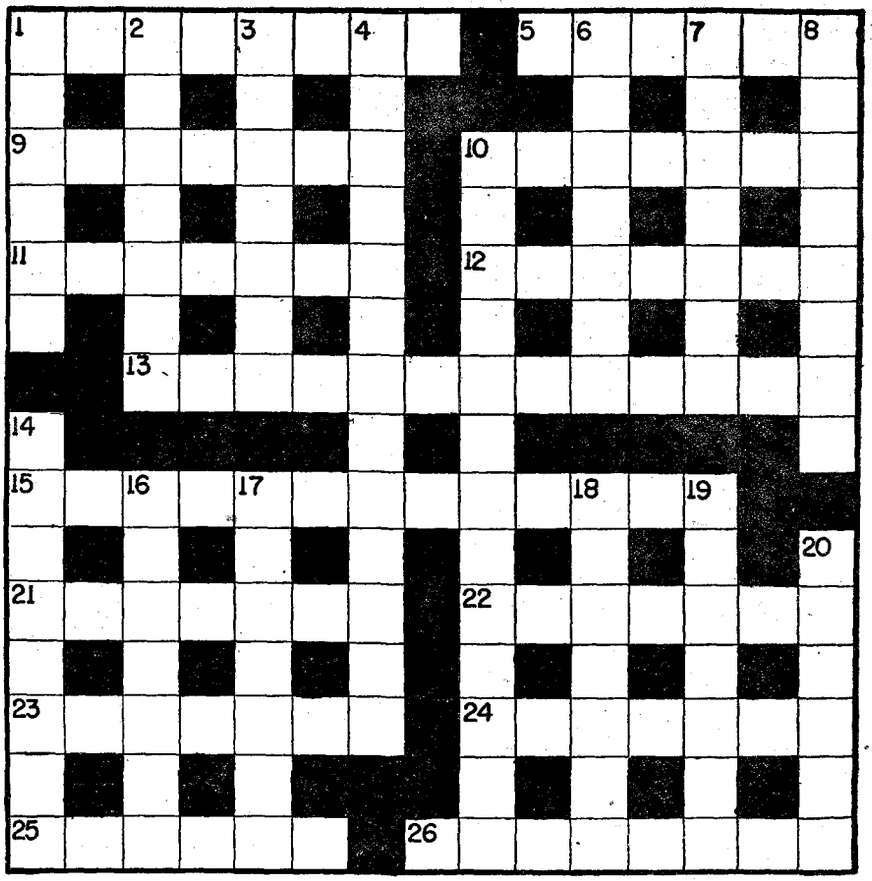

ACROSS

1 This sort of fly is after a big bird to suspend in oil. (8)
5 and 14 down. One does as an author who gives witness, as well as a controversial figure; but the retiring person goes from the bench to here. (6, 8)
9 Go in orderly fashion, or with plenty of spirit? (4, 3)
10 The painter who makes you see a little room, and nothing else. (7)
11 The road levels, the sky goes up, *and the paint peels.* (7)
12 Plunging. (7)
13 Construct or confine, when there's some question of goods delivery. (3, 2, 2, 4, 2)
15 Is earth so sad? (13)
21 Old bag in *La Boheme?* (7)
22 Bring back surplus money in Scandinavia. (7)
23 A competitor with retrogressive art in a bad canvas. (7)
24 Loose. (2, 5)
25 Is back with a Nordic lad inside a Chinese province. (6)
26 Resembles losing a pound in the process. (8)

DOWN

1 Show up as a former attitude? (6)
2 A portion comes up under a starburst. (7)
3 Photographed, and placed in the track-meet? (4-3)
4 You will have finished this, as an example, with favorable prediction as to the outcome. (6, 7)
6 Awkward. (7)
7 Get up to work and slow down the boat with both sails and oars. (7)
8 Close breaks? (8)
10 Where to look for the cost of transportation? (If it stays up, better not come down!) (13)
14 See 5 across.
16 Sat *inter alia* in London, rather than France. (7)
17 Started making combinations, four at a time. (7)
18 Lesions under your feet? (7)
19 Strong drink with butter? Coarse, of course! (7)
20 "--------'d with sanctimonious theory." (*The Princess,* Tennyson) (6)

• * •

SOLUTION TO PUZZLE No. 544

ACROSS:—1 REFLEX ACTIONS; 9 BURST; 10 PUNCTILIO; 11 EN ROUTE; 12 CLOSETS; 13 OLIVE; 14 ANTEDATED; 16 BAGPIPERS; 18 MOUNT; 19 IMPOSED; 21 BORACIC; 22 GRISETTES; 23 TUTTI; 24 MEDICINE LODGE.

DOWN:—1 RUBBER OF BRIDGE; 2 and 6 FOR CRYING OUT LOUD; 3 ENTHUSE; 4 AMPLE; 5 TUNICATES; 7 SALVE; 8 HOUSE DETECTIVE; 14 ANECDOTIC; 15 TRUNCATED; 17 INSTEAD; 18 MARITAL; 20 PRIAM; 21 BISON.

Readers are invited to send for a free copy of Mr. Lewis's "ground rules." Address requests to Puzzle Dept., The Nation, 333 Sixth Avenue, New York 14, New York.

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Speak Out, America

The National Lawyers Guild calls on Americans everywhere to speak out against the modern inquisition

I.

Americans who value freedom have been heartened by the rising crescendo of resistance in recent months to the public pillorying of individuals and organizations which too grievously has pervaded the American scene for too long a period.

Fresh from his round-the-world tour Adlai Stevenson assailed McCarthyism and warned that America's prestige was being undermined by inquisitions, purges and book-burning. The General Council of the Presbyterian Church has decried the attacks upon citizenry which confuse "treason and dissent" as "utterly alien to our democratic tradition" and alerted its members in 8,000 congregations to the dangers. Leading clergymen of other denominations supported the Presbyterian statement. On October 22, the Society for Social Responsibility in Science, whose membership includes Albert Einstein and Max Born, Nobel Prize winners, called upon scientists everywhere "to strengthen the spirit of free inquiry by clear and courageous public expression" and urged scientists to lose their fear of being "labeled" for saying things they believed. And, on November 16 the faculty of Columbia College went on record as firmly opposed to current Congressional investigations of educational institutions "because they are creating, in academic communities, and in the nation at large an atmosphere of apprehension and distrust that is jeopardizing the cause of free inquiry and threatening the right of dissent, which is the foundation of civil liberties in a free society."

II.

Public pillorying has not been the private preserve of Congressional committees. The Attorney General has not refrained from wielding the weapons of character assassination. His attack impugning the loyalty of an outgoing President should forever shatter the notion that any American is safe as long as the modern Inquisition is allowed to continue.

Here we do well to grasp the key point stressed by Mr. Truman in his broadcast to the nation: "This tragic debasement of high office by the Attorney General is bad enough, but the thing I wish most to get over to you tonight is that this incident is only the most publicized and the most recent example of the decay of the basic principles of freedom now taking place in this country."

Of less recent vintage is Mr. Brownell's assault on the reputation of the National Lawyers Guild, a bar association which, for 17 years, has endeavored to promote justice, the general welfare, and defend the civil rights and liberties of all Americans. In advance of a hearing and without prior notice—Mr. Brownell publicly announced before a convention of the American Bar Association his "determination" that the National Lawyers Guild was a "subversive" organization "at least since 1946." He then asked the Guild to show why it should not be listed as such. Thus we have the astounding spectacle of the chief law officer of the land—acting not only as prosecutor and judge—but announcing his sentence in advance. Mr. Brownell's concept of fair play is indeed bizarre.

Mr. Brownell charges the Guild with no unlawful action. He refers to no action on its part claimed to be injurious to our country or its institutions. His charges relate only to the alleged political beliefs of some of its members, or supporters, to the alleged similarity of some of its views with some views of the Communist Party, and to its action in opposing Congressional inquisitions and legislation or prosecutions affecting Communists, among others, which, the Guild contended, invaded basic constitutional guarantees.

Typical of the charges and of evidence used against the Guild are the following: that one member allegedly acted improperly when representing a person accused of espionage in a case in which the Guild had no part; that Communist publications allegedly "reported with approval" Guild activities; that the Guild intervened as friend of the court to defend civil rights and liberties in certain cases involving Communists; and that it opposed certain legislation and Congressional investigations said to be directed at Communists.

The Attorney General's charges thus rest wholly upon the pernicious device of "guilt by association." The application of this alien device has now become widespread in our land. As Henry Steele Commager recently said: "It is time that we see this doctrine of guilt by association for what it is; not a convenient device for detecting subversion, but a device for subverting our democratic principles and practices, for destroying our constitutional guarantees, for corrupting our faith in ourselves and in our fellow men."

Full freedom of association is essential to modern democracy. In most spheres of life today, the individual can make his influence felt only by joining with others in an organization. Hence the attack on free association, through the use of guilt by association, constitutes one of the most dangerous anti-democratic developments of modern times.

We maintain that the Attorney General—or any other government official for that matter—has no constitutional authority to proscribe organizations for their views or associations. Under our Constitution, as the Supreme Court has said, "no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion...."

III.

The National Lawyers Guild is dedicated to resisting the onslaught by public officials on basic Constitutional rights. It has, therefore, instituted suit in the Federal District Court challenging the constitutional authority of the Attorney General to blacklist organizations. If this challenge is upheld, the inquisition and character assassination by public officials will have been dealt a severe blow.

What is at stake is something more than the right of a bar association to exist untrammeled by a political appointee. What is at stake is the cause of freedom—the right to think and associate with others to advance common lawful aims free from intimidation or coercion by would-be thought police.

The counter-attack against the Inquisition has begun. Will you help it succeed?

Speak out and say what you think about the proscription of organizations. Urge organizations with which you are affiliated to speak out.

Distribute our brochure "An Appeal to Reason." Contribute funds to our Return-to-Reason-Appeal which will be used to bring these issues to the attention of the American people.

NATIONAL LAWYERS GUILD, 40 Exchange Place, New York 5

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The Guild believes that all the races of man are equal. It opposes any discrimination among them on any account.

Attachment to these principles has led the Guild to oppose the effort to silence every voice of protest and dissent in the interest of conformity to a new orthodoxy.

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